Supreme Court of the United States

OCTOBER TERM, 1970

No. 5944

CLAUDE ALEXANDER,

Petitioner,

—v.—

STATE OF LOUISIANA,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

INDEX

	Page
Relevant Docket Entries	1
Members of Grand Jury	3
Minutes of Grand Jury	4
Indictment	5
Motion to Quash Indictment	6
Exhibits Introduced at Hearing on Motion to Quash Indictment	7
Card for Juror (State's Exhibit A)	7
Jury Questionnaire	8
Voter Registration Application	11
Certificate of Court Clerk	15
Second Certificate of Court Clerk	15
List of Jury Venire	16
Order on Defendants' Bill of Exception No. 10	26

Page

Order Denying Motion to Quash Indictment ____ 27

Transcript of Testimony at Hearing on Motion to Quash Indictment ____ 29

Testimony

Defendants' Witnesses:

Eraste R. Landry—
Direct ____ 29

Oliver J. LeBlanc—
Direct ____ 32

Eraste R. Landry—
Direct recalled ____ 38

Oliver J. LeBlanc—
direct (recalled) ____ 40

Agnes Felix—
Direct ____ 62
Cross ____ 63
Redirect ____ 65

Transcript of Testimony, Trial on Merits ____ 65

Hearing Outside Presence of Jury on Admissibility of Confession ____ 65

Trial Before Jury ____ 67

Testimony

State's Witnesses:

Shirley Picard—
Direct ____ 67
Cross ____ 71
Redirect ____ 79
Recross ____ 81

Sidney Joseph Broussard, Jr.—
Direct ____ 83
Cross ____ 88
Redirect ____ 97
Recross ____ 97

Anthony Navarre—
Direct ____ 98
Cross ____ 101
Redirect ____ 107
Recross ____ 108

Page

Defendant's Witness:
Claude Alexander—
Direct ____ 110
Cross ____ 116
Redirect ____ 121
Court's Ruling on Admissibility ____ 122
Defendant's Witness:
Claude Alexander—
Cross ____ 127
Redirect ____ 136
Recross ____ 142
Redirect ____ 145
State's Rebuttal Witnesses:
Shirley Picard—
Direct ____ 146
Cross ____ 150
Redirect ____ 157
Recross ____ 157
Redirect ____ 158
Sidney Joseph Broussard, Jr.—
Direct ____ 159
Cross ____ 161
Anthony Navarre—
Direct ____ 166
Cross ____ 168
Opinion of Supreme Court of Louisiana, McCaleb, J. ____ 170
Order of Supreme Court of Louisiana Denying Rehearing, May 4, 1970 ____ 181
Order of the Supreme Court of the United States, dated March 1, 1971, granting the motion for leave to proceed in forma pauperis and granting the petition for a writ of certiorari ____ 181

15TH JUDICIAL DISTRICT COURT
CRIMINAL DOCKET NUMBER 31132
PARISH OF LAFAYETTE, LOUISIANA

STATE OF LOUISIANA

—V—

CLAUDE ALEXANDER

CHRONOLOGICAL INDEX OF ALL DOCKET ENTRIES:

1967		
SEPT.	15	Indictment Returned by Grand Jury
OCT.	13	Application to Admission to Bail and/or Preliminary Hearing Filed on behalf of Claude Alexander
NOV.	7	Request for Bills of Particulars (Claude Alexander)
	8	Motion to Quash Indictment (Claude Alexander)
	9	Answers to Applications for Bill of Particulars
	10	Motion for Severance filed on behalf of Lee Perry Pratt
	10	Application for Bill of Particulars (Lee Perry Pratt)
	10	Motion to Quash Indictment (Lee Perry Pratt)
	10	Exhibits Introduced on Motion to Quash
1968		
JAN.	15	Motion to File Separate Indictments

1969

FEB.	6	Bill of Exception No. 4, 5, 6, 7, 8 and 9 (Claude Alexander)
	6	Bill of Exception No. 10 (Claude Alexander)
	6	Bill of Exception No. 1 (Lee Perry Pratt)
	6	Bill of Exception No. 2 (Lee Perry Pratt)
	10	Bills of Exception 1-2-3 (Claude Alexander)

List of Members of Grand Jury

GRAND JURY

Upon instruction from the Court, the Sheriff here called the names of the twenty (20) citizens selected by the Jury Commission of the Parish of Lafayette, and summoned by the Sheriff to serve as Grand Jurors, if drawn as such, for the September, 1967 Criminal Term of the Fifteenth Judicial District Court of Louisiana, in and for the Parish of Lafayette, Louisiana, to-wit:

1. Nolan Joseph Winters
2. Felix Henry Foreman, Jr.
3. A. J. Szabo
4. John Raywood LeBlanc
5. Tom Brook Metcalfe
6. Paul Douglas Perkins
7. Bobby Joseph Richard
8. James Francis Lavergne
9. Freddie Lantier
10. Harry Elton Delahoussaye
11. Adam William Duhon
12. Floyd Meaux
13. Robert Arthur Anderson
14. Warren Trahan
15. Walter Frank Comeaux
16. Arthur James Maloney, Sr.
17. Glenn E. F. Oser
18. Ewell James Sonnier
19. Charles Carol Comeaux
20. Ellzey J. Terro

All answered to their names except:

1. Nolan Joseph Winters	Excused by the Court
2. Tom Brook Metcalfe	Excused by the Court
3. Harry Elton Delahoussaye	Excused by the Court

Whereupon, the remaining prospective Jurors were then sworn on their Voir Dire and then examined by the Court on their qualifications to serve as Grand Jurors, if drawn. The Court found these remaining prospective Jurors qualified.

The Court appointed FLOYD MEAUX as Foreman of the Grand Jury.

Complying with instructions from the Court, the Deputy Clerk of Court produced the Jury Box, properly locked, sealed and endorsed, which said endorsement was read aloud by the Deputy Clerk of Court, which endorsement was signed by the members of the Jury Commission of the Parish of Lafayette. Further, following in-

structions from the Court, the Deputy Clerk of Court opened the box and removed the envelope therefrom, containing the 20 cards having the names and addresses and wards of the twenty prospective Jurors. The inscription on the envelope was read aloud also. The Court instructed the Deputy Clerk of Court to open the envelope and place the cards contained therein in another box, said box was handed to the Sheriff, who then shook the box vigorously and drew therefrom 12 cards with the names of 12 separate prospective Jurors, those drawn were as follows:

1. Felix Henry Foreman, Jr.
2. A. J. Szabo
3. Paul Douglas Perkins
4. Bobby Joseph Richard
5. James Francis Lavergne
6. Freddie Lantier
7. Adam William Duhon
8. John Raywood LeBlanc
9. Floyd Meaux
10. Robert Arthur Anderson
11. Warren Trahan
12. Walter Frank Comeaux

MINUTES OF GRAND JURY

THE TRUE BILLS RETURNED BY THE GRAND JURY WERE AS FOLLOWS:

* * * *

"31133 CLAUDE ALEXANDER & LEE PERRY PRATT AGGRAVATED RAPE"

* * * *

Whereupon, Court then adjourned until the 18th Instant.

* * * *

INDICTMENT—Filed Sept. 15, 1967

STATE OF LOUISIANA,
PARISH OF LAFAYETTE

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF LOUISIANA:

The Grand Jurors of the State of Louisiana, duly empaneled, sworn and charged to enquire within and for the Parish of Lafayette, State aforesaid, upon their oath do present THAT Claude Alexander and Lee Perry Pratt at the Parish of Lafayette, on or about the 4th day of September, in the year of our Lord, One Thousand nine hundred and sixty-seven (1967) within the Fifteenth (15th) Judicial District of Louisiana, committed aggravated rape upon Linda Louise Dossey contrary to the form of the Statute of the State of Louisiana, in such cases made and provided and against the peace and dignity of the same.

/s/ Bertrand LeBlanc
District Attorney,
Fifteenth Judicial District
of Louisiana

MOTION TO QUASH INDICTMENT—Filed Nov. 8, 1967
FILED ON BEHALF OF CLAUDE ALEXANDER

NOW INTO THIS HONORABLE COURT comes Claude Alexander through his undersigned Counsel, who, having heard the indictment read and protesting that he is not guilty of the offense set out therein, moves to quash the said indictment, and each count thereof for the following reasons to-wit:

(1) That citizens who are females were systematically excluded from the Grand Jury list and venire and from the Grand Jury as empaneled.

(2) That citizens of the Negro race were included in the Grand Jury list, and Grand Jury venire, in such small numbers as to constitute only a token, having no relationship to the number of citizens of the Negro race as compared to the number of citizens of the Caucasian race in the general population in the Parish of Lafayette and in the Fifteenth Judicial District of the State of Louisiana.

(3) That the indictment found by the Grand Jury is defective for failing to inform the accused, Claude Alexander, of the facts and circumstances necessary to constitute the alleged crime of aggravated rape.

(4) That the indictment against Claude Alexander is invalid and illegal and should be quashed because said indictment was returned by a Grand Jury empaneled from a Grand Jury venire made up contrary to the provisions of Amendment V., Amendment VI., Amendment XIV. and Amendment XV., of the Constitution of the United States of America.

WHEREFORE the said Claude Alexander prays that his motion to quash be maintained and that the said indictment as to him, and as far as he is concerned, be declared illegal, null and void, and that he be discharged

therefrom and for all general and equitable relief and all necessary orders in the premises, etc.

Lafayette, Louisiana this 8th day of November, 1967.

PICCIONE, PICCIONE & WOOTEN
P. O. Box 3029, Lafayette, La.

By: /s/ Joseph J. Piccione
Attorneys for Claude Alexander

* * * *

STATE EXHIBIT: JURY CARD

[Filed 1-10-67, /s/ Joyce Kebodeax, Dy. Clk. of Crt.]

Name Lyons, Percy M. Race W.

Address 221 W. Beverly Dr.,
Lafayette, La.
234-5411—234-1495

Birth 4-24-1918 Marital Status _____

Occupation Geologist

Registration: Lafayette Ward 3 Pct. 5

Will Claim Exemption Yes _____ No _____

GV 3-2-67
37357

DRAWN FOR PETITE JURY SERVICE ON 4-11-67

Case settled, did not serve

State Exhibit "B"

STATE EXHIBIT

[Filed 11-10-67, /s/ Joyce Kebodeax, Dy. Clk. of Crt.]

Questionnaire No. _____

QUESTIONNAIRE ON JURY QUALIFICATIONS

Please fill out this questionnaire and return in the enclosed stamped and addressed envelope

OLIVER J. LEBLANC,
Clerk of Court and
Ex-officio member of Jury Commission
Court House
Lafayette, Louisiana

1. Print name in full _____
First Middle Last
2. Residence address _____
Street or Rural Route
_____ Louisiana.
City or town
3. Occupation _____
4. Residence telephone _____ Business telephone _____
5. Business address _____
6. Place of birth _____
7. Date of birth (month) _____ (day) ____ (year) ____
8. Race _____ Sex _____
9. How long have you resided in Louisiana? _____
How long have you resided in Lafayette Parish? ____
10. Are you a registered voter _____
Parish Lafayette Ward _____ Precinct _____

11. Are you able to read and write the English language? _____

12. State highest grade completed in school (or extent of education) _____

13. Are you under interdiction, that is to say been declared by a court to be mentally incompetent? _____

14. Have you even been convicted or pleaded guilty to any criminal offense? _____
If so, state crime or crimes, in what Court and when. _____

15. Do you know of any legal reason why you would be exempted from jury duty? _____
If exempt, would you waive such exemption? _____

16. Do you have any physical impairment such a sight, hearing, etc., which would interfere with your serving as a juror? _____ If so, describe fully _____

17. What season of the year would be most convenient for you to serve if chosen? _____

18. Have you ever served on a jury? _____ If so, in what court? _____

When _____

_____
Signature in full

_____
Date

FILL OUT THIS QUESTIONNAIRE AND RETURN TO JURY COMMISSION IMMEDIATELY

JURY COMMISSIONERS FOR THE
PARISH OF LAFAYETTE
FIFTEENTH JUDICIAL DISTRICT
STATE OF LOUISIANA

GREETINGS:

YOU ARE HEREBY REQUESTED to fill in the information requested on the reverse side hereof and mail same to Oliver J. LeBlanc, Clerk of Court and ex-officio member of the Jury commission, Court House, Lafayette, Louisiana, without delay.

ALL QUESTIONS MUST BE ANSWERED

This notice is to be returned immediately

By authority of the
Jury Commissioners

/s/ Oliver J. LeBlanc
OLIVER J. LEBLANC
Clerk of Court and Ex-officio
member of the Jury
Commissioner

ALL INFORMATION MUST BE FURNISHED AND
WILL BE KEPT CONFIDENTIAL

See reverse side

YOUR NAME IS UNDER CONSIDERATION
FOR FUTURE JURY SERVICE

STATE EXHIBIT: VOTER REGISTRATION

Pratt Exhibit D

[Filed 11-10-67, /s/ Joyce Kebodeax, Dy. Clk. of Crt.]

[Cable Seal]

Date _____
Ward No. _____
Prect. No. _____

APPLICATION FOR REGISTRATION

OFFICE OF REGISTRAR OF VOTERS

PARISH OF LAFAYETTE,
STATE OF LOUISIANA

_____
(Residence Address)

I am a citizen of the United States and of the State of Louisiana and have not been disfranchised by any provisions of the constitution of this State.

My name is _____
(Mr.-Mrs.-Miss) (First) (Middle Name or Initial) (Last)

I live at _____
(House No.) (Apt. No.) (Street) (City or Town)

My sex is (circle one) Male Female

Have you been a resident of this state for more than one year, of this parish for over six months, and lived at your present address for more than three months, immediately preceding this date. (Check one) Yes ☐ No ☐
The place of my birth is _____
(City or Town)

_____
(State or Foreign Country) (Parish or County or Province)

I am over 21 years of age and the date of my birth is _____ I was last registered
(Month) (Day) (Year)
as a voter in (leave blank if none) _____
(Parish or County)

_____
(State)

I hereby declare my party affiliation to be (circle one)

Democrat - Republican - States Rights - None - Other ____

(Indicate your answers to the following questions in the spaces provided. All questions must be answered).

Have you been convicted of a felony without receiving a full pardon and restoration of franchise? Yes ☐ No ☐

Have you been convicted of 2 or more misdemeanors and sentenced to a term of ninety (90) days or more in jail for each such conviction, other than traffic and/or game law violations, within five years before the date of making this application for registration as an elector? Yes ☐ No ☐

Have you been convicted of any misdemeanor and sentenced to a term of six (6) months or more in jail, other than traffic and/or game law violations, within one year before the date of making this application for registration as an elector? Yes ☐ No ☐

Have you lived with another in "common law" marriage within five years before the date of making this application for registration as an elector? Yes ☐ No ☐

Have you given birth to an illegitimate child within five years before the date of making this application for registration as an elector? (The provisions hereof shall not apply to the birth of any illegitimate child conceived as a consequence of rape or forced carnal knowledge.) Yes ☐ No ☐

Have you acknowledged yourself to be the father of an illegitimate child within five years before the date of making this application for registraton as an elector? Yes ☐ No ☐

TURN CARD OVER

Under Louisiana Revised Statutes 18:222, no person shall register falsely or illegally as a voter, or make a false statement in an affidavit or other document that he presents for the purpose of procuring himself to be registered or to be retained as a registrant. No person shall knowingly present, for any purpose within the purview of this Chapter, an affidavit or other document containing a false statement.

Whoever violates this Section shall be fined not less than five hundred nor more than one thousand dollars, or imprisoned for not less than six months nor more than one year, or both. The penalties shall be doubled for the second or any succeeding offense of the same character. I have read the statements above. Yes ☐ No ☐

"Applicant shall demonstrate his ability to read and write from dictation by the Registrar of Voters from the Preamble to the Constitution of the United States of America."

PREAMBLE

We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America. (Article VIII, 1 (c) (7) La. Constitution)

Question Form Selected: (circle one)

1 2 3 4 5 6 7 8 9 10

CITIZENSHIP TEST FOR REGISTRATION

Circle letter indicating your answers to the six (6) numbered questions you have chosen.

1 — a b c	3 — a b c	5 — a b c
2 — a b c	4 — a b c	6 — a b c

Sworn to and subscribed before me this _____ day of _____, 196__

_____
(Deputy) Registrar

I do solemnly swear that I will faithfully and fully abide by the laws of this State and that I am well disposed to the good order and happiness thereof.

_____
Applicant's Signature

The Following Information About The Applicant To Be Completed By The Registrar:

My race is _____ The color of my eyes is _____

My mother's maiden name is _____

My occupation is _____ My employer is _____

Change of address:

Date _____ Address _____ Wd. __ Pct. __

Date _____ Address _____ Wd. __ Pct. __

Date _____ Address _____ Wd. __ Pct. __

Remarks: _____

Change of name:

Date _____ I am now Mr.-Mrs.-Miss _____

(Upon Request, the Registrar Shall Furnish Each Applicant a Copy of His Application Form)

STATE EXHIBIT: CLERK'S CERTIFICATE

STATE OF LOUISIANA
PARISH OF LAFAYETTE

This is to certify that on the card index of 7,374, a total of 1,015 negroes are included, and also 189 is with no race, and it is from this file that all General Venire are supplemented.

THUS DONE AND SIGNED this 14th day of November, 1967.

/s/ Oliver J. LeBlanc
OLIVER J. LEBLANC
Clerk of Court

STATE EXHIBIT: CLERK'S CERTIFICATE

STATE OF LOUISIANA
PARISH OF LAFAYETTE

THIS IS TO CERTIFY that the attached list is a true and correct copy of the names used on the General Venire on July 25, 1967 for the purpose of drawing 20 names as proposed members of the Grand Jury to be in attendance on September 11, 1967; also, for the purpose of drawing 30 names for Petit Jury service on November 6, 1967; and, also for drawing 30 names for Petit Jury to be in attendance on November 27, 1967; also for the drawing of 30 names to serve as Petit Jurors on December 18, 1967; also, 30 names for Petit Jury service on January 15, 1968; also, 30 names for Petit Jury service for February 19, 1968.

From these 400 names, 25 negroes were placed in the box and 4 cards drawn show no race.

THUS DONE AND SIGNED this 14th day of November, 1967 at Lafayette Parish, Lafayette, Louisiana.

/s/ Oliver J. LeBlanc
OLIVER J. LEBLANC
Clerk of Court

STATE EXHIBIT: LIST OF JURY VENIRE

	NAME	WARD	PREC.	RACE
1.	Neil Pierre Reaux, Jr.	5		White
2.	Sidney Bernard Flynn	3		White
3.	Thomas Lee Meaux	3		White
4.	Warren James Stutes	3		White
5.	Marvin Lesley Reinold	10		White
6.	Farrell Morgan	8		White
7.	Benny Jules Andrus	10		White
8.	Lee Roy Dugas	3		White
9.	Carrol Paul Trahan	1		White
10.	Joseph Howard Langlinais	8		"
11.	Wilmer Hanes	3		"
12.	Arthur James Maloney, Sr.	3		"
13.	Walter Frank Comeaux	3		"
14.	Wilven John Duhon	3		"
15.	Ralph Donald Dozier	6		"
16.	Nerry Antoine Trahan	3		"
17.	Emanuel Paul Bercegeay	7		"
18.	Irving Jules Guidry	3		"
19.	James Edward Grevé, Sr.	10		White
20.	Phillip Joseph Barr			"
21.	Paul Douglas Perkins	3		"
22.	Alvin Edgar Hebert	3		"
23.	Antoine Eugene Bergeaux	5		"
24.	Freddie J. Mouton, Jr.	3		"
25.	Charles Richard Fernandez, Jr.	5		White
26.	Ernest Ignatiaus Fuselier	3		Negro
27.	Joseph Clifton Carmouche	3		White
28.	Glenn Henry Briley	10		White
29.	Clarence Bourque	5		White
30.	Francis Savoie	6		White
31.	Ariel LeBlanc, Jr.	10		White
32.	Gene T. Faulk	3		White
33.	Luke Mitchelle Guilbeaux	3		White
34.	Charles Firmin Levert, Jr.	3		White
35.	Edmond Lloyd Guillot	8		"
36.	Clement Gautreaux, Jr.	7		"
37.	David Guidry, Sr.	3		"
38.	George Patrick Champagne	5		"
39.	Andrus John Duhon	3		"
40.	Wallace Joseph Landry	3		"
41.	Harold Gene Landry	3		"
42.	Elridge Michael Miller	3		"
43.	Raoul D. Breaux	3		"
44.	Warren Trahan	2		"
45.	Lloyd William Johnson	1		

	NAME	WARD	PREC.	RACE
46.	Hilbert P. Potier	1		White
47.	Herman John Broussard	10		"
48.	Gerald Bernard Landry	9		"
49.	Valrie Domingue, Jr.	3		"
50.	Thomas Shafter Derveloy	3		White
51.	Elvin Jay Guidry	7		White
52.	Norman Joseph Yentzen, Jr.	6		"
53.	Charles Richard Lynch			White
54.	Jack Grant West	6		White
55.	J. Archie Simon	3		"
56.	Blaise Arelie Armentor	5		"
57.	Robert Pierre Boudreaux	1		"
58.	Autrey J. Baudoin	3		"
59.	Maurice James Touchet	2		"
60.	George White	3		Negro
61.	Pierre V. Landry, Jr.	3		White
62.	Charles Lynn Landry	5		"
63.	Jerald Max Bearden	10		"
64.	Ray Allen Guidry	3		"
65.	Maxim Paul Soulier	5		"
66.	Charles Carol Comeaux	3		"
67.	Bernice Jean Constantin	2		"
68.	Herman Dalton Richard	10		White
69.	Howard Joseph Champagne	8		White
70.	Carey Allison Williams	8		White
71.	Gerald G. Fremin	9		White
72.	Reese Edgar Carter	10		White
73.	Louis Nolan Menard	3		White
74.	Howard Dean Crauey	10		White
75.	Allen Hebert			White
76.	Stanley Joseph Broussard	6		White
77.	James Francis Lavergne	1		White
78.	Walter Weber	1		White
79.	Lee Bruce McGee	1		White
80.	Robert Thibodeaux	3		White
81.	Earl Joseph Boudreaux	5		White
82.	John Paul Gonzales	10		White
83.	Lee Roy Dugas	3		White
84.	Nathan Ancelet	3		White
85.	Emery John Gallet	4		White
86.	Eugene Edward Lavergne	3		White
87.	Oston Kossuth Simon	2		White
88.	Floyd Menard	3		White
89.	Saul Perrodin	3		White
90.	Malcolm Joseph Bell	7		White
91.	Francis Alleman	1		White
92.	John Flavius Wilkinson	10		White
93.	Joseph C. Chargois	7		White

	NAME	WARD	PREC.	RACE
94.	Frank Louis Girouard, Jr.	5		White
95.	Francis Phillip David	9		White
96.	Ewell James Sonnier	1		White
97.	Freddie Lantier	3		White
98.	Alvin James Stelly	1		White
99.	Ward Joseph Sanchez, Jr.			White
100.	Harry Elton Delahoussaye	3		White
101.	Judson Alfred Voorhies	3		White
102.	Cyrus Joseph Brown	3		Negro
103.	Linsey Comeaux	8		White
104.	Louis John Bergeron, Jr.	3		White
105.	William Alfred Curley	3		White
106.	Aaron Joseph Nepveux	3		White
107.	James Harold Prejean, Sr.	3		White
108.	Sidney Bergeron	1		White
109.	Walter Raliegh Broussard	4		White
110.	John Austin Hebert	9		White
111.	John Allen Stelly			White
112.	Lee Joseph Bacon	5		White
113.	Allen Joseph Fabre	5		White
114.	Richard Jarvis Fortier	9		White
115.	Robley Menard	7		White
116.	Dudley Smith	3		White
117.	William Davis Frazell	3		White
118.	Leroy Anthony Monte	3		White
119.	Joseph Alvin Thibeaux	3		White
120.	Mack L. Dupuis	3		White
121.	Joseph C. Glorioso	3		White
122.	Sidney Ferdinand Siadous	3		White
123.	Edmund Thomas Lemmon	7		White
124.	Harry Floyd Broussard	4		White
125.	Walter St. Julien Comeaux, Jr.	5		White
126.	Harold John Romero	9		White
127.	Willis Joseph Morvant	5		White
128.	Ramond Edward Billeaud	5		White
129.	Maxie Duhon	4		White
130.	Lee Hazard Broussard	7		White
131.	Jules Dale Vincent	9		White
132.	Nunzia Joseph Varisco	7		White
133.	Don Louis Landry	7		White
134.	Robert Arthur Anderson	5		White
135.	Floyd Meaux	3		White
136.	Peter Edward Martin, Sr.	8		White
137.	Glenn Roberson Nations	10		White
138.	Eris J. LeBlanc	10		White
139.	Dalton Trahan	2		White
140.	Russell Roderic Mouton	3		Negro

	NAME	WARD	PREC.	RACE
141.	Joseph Wilbert Chevalier	3		Negro
142.	Leroy Picard	3		White
143.	Edward Louis Stelly	3		White
144.	Augustine Joseph Gauthier	7		White
145.	Taylor Joseph Landry	3		White
146.	Arthur Leo Boulet	3		White
147.	Adam William Duhon	3		White
148.	George Mouton	3		White
149.	Gilbert Roderick Fontenot	3		White
150.	John Tarleton Word	3		White
151.	Robert R. Stafford	3		White
152.	Albert Russell Picket	3		White
153.	Forrest Kent Dowty	3		White
154.	John Edmond McElligott, Sr.	3		White
155.	Eugene Harris Darnall	3		White
156.	Dan Irvin Quin			White
157.	Anthony Reynolds			Negro
158.	Willie B. Washington	5		Negro
159.	James Clifford Shay, Sr.	3		Negro
160.	Frank Raphael Durand	3		White
161.	Francis Ephrem Boustany	3		White
162.	Charles Augustus Miller	3		White
163.	Jimmy J. Benoit	8		White
164.	Adam Romero	1		White
165.	Joseph Withfield Benoit	1		Negro
166.	Theo Henry Weber	1		White
167.	Theodore B. Shaikewitz	10		White
168.	Emerson Jackson Foote	5		White
169.	Evan Henry Hughes	3		White
170.	Henry Edwin Featherston	10		White
171.	James Joseph Daigle	3		White
172.	Roland F. Pohler	10		White
173.	Paul Sonnier	1		White
174.	Curtis Broussard	8		White
175.	Carrol Lee Sonnier	8		White
176.	Carroll E. Guilbeau	6		White
177.	Wesley Eli Beadle, Jr.	7		White
178.	Gerald Joseph Guidry	10		White
179.	Claude Joseph Thomas	3		White
180.	Bernard Prejean			White
181.	Joseph Prejean	7		Negro
182.	Wilmer Curtis Goss, Jr.			White
183.	J. Warren Landry	1		White
184.	Ivan Anthony Bourdier			White
185.	George Dallas Turner			White
186.	Edward Clarence Ledet	3		Negro
187.	Teddy Arceneaux	1		White

	NAME	WARD	PREC.	RACE
188.	Ted Allman Richardson	3		White
189.	James Hilary Burleigh	6		White
190.	Aaron Stutes	8		White
191.	James Viel Savoie	6		White
192.	Currise Jude Broussard	1		White
193.	Joseph Leonce LeBlanc	3		White
194.	Glenn E. F. Oser	3		White
195.	Paul Guidry	8		White
196.	Clifton Anthony Duplin	1		White
197.	James Leewood Breaux	1		White
198.	James Arthur Nolan, Jr.	7		White
199.	Felton Paul Romero	3		White
200.	Otto Joseph Reaux	10		White
201.	Joseph Le Baudion	1		White
202.	V. Fred Kesner	10		White
203.	Harold Charles Champagne	10		White
204.	Clifton Pierre Broussard	4		White
205.	Curtiss Glenn Gilley	5		White
206.	Austin Trahan	1		White
207.	Santo Anthony Martaroma	3		White
208.	Aulley Joseph Breaux	3		White
209.	Bill Joseph Garcia	5		White
210.	Earl Brown Flatt	3		White
211.	Donald Louis Roger	6		White
212.	Paul Albert Thibodeaux	3		?
213.	Alcee Clemence Matthews	3		White
214.	Marion F. Pruitt	3		White
215.	Larry Louis Benoit	3		White
216.	Glenn Daniel Baker	5		White
217.	Stephen Lemelle	3		Negro
218.	Elias Guidry	8		White
219.	Tom Brook Metcalfe	10		White
220.	John Raywood LeBlanc	9		White
221.	Narcisse Joseph Dominque	2		Negro
222.	A. J. Azabo	10		
223.	Bobby Joseph Richard	6		White
224.	Vernon Patrick Landry	1		White
225.	Calvin Louis Lantier	8		White
226.	Ralph Douglas McGee, Jr.	10		White
227.	Dudley Joseph Richard	3		White
228.	Vinegnt Lawrence Lauin	10		
229.	Pierre Roger	1		White
230.	Robert Louis Brakefield, Jr.	10		White
231.	Francis William Miller	10		White
232.	Carroll Joseph Green	10		White
233.	Charles N. Lenox, Jr.	10		White

	NAME	WARD	PREC.	RACE
234.	Lee James Blanchard	3		White
235.	Leo A. Cavell	7		White
236.	Walter Lee Miller	3		White
237.	Tophie Joseph Mahfouz	3		White
238.	Gervin Gregory Tweedel	3		White
239.	Joseph L. Guidry	3		White
240.	Phillip Joseph Dubois	3		White
241.	Louis Locke Neveu	5		White
242.	John Bodin, Jr.	5		White
243.	Elridge Joseph Kidder	6		White
244.	Roy Jean Landry	5		White
245.	Maurice Joseph Sonnier	3		White
246.	Burton Andrus	6		White
247.	Edward Eugene Hernandez	3		White
248.	Archie Francis, Sr.	1		Negro
249.	John Bunyan Smith, Jr.	3		White
250.	Larry Lee Boudreaux	8		White
251.	Robert Frank Wendrock	3		White
252.	John Vinson Staten, Jr.	3		Negro
253.	Francis LeBlanc	8		White
254.	Dozier Lester, Jr.	10		White
255.	Ervin Joseph Breaux	6		White
256.	Nolan John Istre	2		White
257.	Alvin Albert King	10		White
258.	Charles Frank Gautreaux	3		White
259.	Wesley Guidry	2		White
260.	Vincent Guidry	3		White
261.	Robert Rosswell Burkee, Jr.	10		
262.	John Warren Fontenot	3		White
263.	Fernand J. Broussard	3		White
264.	Alexander Clause	6		White
265.	Percy Luke Breaux	1		White
266.	John Maxie Broussard, Sr.	7		White
267.	Ivy Richard, Jr.	3		White
268.	Oran Joseph Theriot	5		White
269.	Joseph Hebert, Jr.	5		White
270.	Linton Pierre Landry	3		White
271.	Arthur Gail Randol, Jr.	3		White
272.	John Allen Chiasson	3		White
273.	Solomon Arthur Womack, Jr.	3		White
274.	Joseph Albert Dugas	3		White
275.	Dallas Paul Vincent	3		White
276.	Rodney P. Alleman	3		White
277.	Lizzie Joseph Mouton	3		White
278.	Percy Willis Champagne	3		White
279.	Curley Joseph Romero	3		White
280.	Bryan Dale LeJeune	2		White

	NAME	WARD	PREC.	RACE
281.	Henry L. Rich	10		White
282.	Clarence Russell Craddock	10		White
283.	Alcee Clemence Matthew	3		White
284.	William Jeffrey Broussard	4		White
285.	Frank Paul Piccione	3		White
286.	Jackie Lee Mayers	3		White
287.	Chester Jean Lantier	2		White
288.	Paul Thibodeaux, Jr.	7		White
289.	John William Thomas	1		White
290.	Thomas Emile Vincent	3		White
291.	Jerry Dale Guidry	3		White
292.	Joseph Donald Sonnier	2		White
293.	Henry Romero, Jr.	3		White
294.	Lee Joseph Guidry	3		White
295.	Henry Clifton Denais	3		White
296.	Allen M. Beasley	10		White
297.	Maxson Jean Duhon	2		White
298.	Jimmie Floyd Vincent	3		White
299.	Arthur Falls Schafer	7		White
300.	Joseph Berchman Daigle	5		White
301.	Sam Sylvester Allgood, Jr.	10		White
302.	Robert V. Fleming	3		White
303.	Clovis Dalcour, Jr.	3		Negro
304.	John Elridge Lagneaux	2		White
305.	Paul Milton Domingue	2		White
306.	Arthur Joseph Felscher	7		White
307.	Lucas Stacy Denais	9		White
308.	Chester Duhon	1		White
309.	Richard Ardoin	3		White
310.	Ira Paul Peltier	8		White
311.	Jessie Lee Hidalgo	3		White
312.	Marc Emory Derouen	3		White
313.	Helaire Trahan, Jr.	1		White
314.	Edwin Hebert	8		White
315.	Jean B. Gallet	4		White
316.	Joseph Lee Chavalier	3		Negro
317.	Robley Joseph Hebert	3		White
318.	Alfred Louis Sonney	3		Negro
319.	Wilbert Joe	3		Negro
320.	Dennis Ray Hoffpauir	8		White
321.	Charles Guidry	8		White
322.	Presley Paul Decou	4		White
323.	Neely Eugene Lowrie	10		White
324.	Joseph Dalton Joe	3		Negro
325.	Anthony Pete Arceneaux	8		White
326.	Curtis J. Alleman	2		White
327.	Earsby John Rideaux	1		Negro

	NAME	WARD	PREC.	RACE
328.	Ellzey J. Terro	2		White
329.	Clarence Gumbs	2		Negro
330.	Dudley Earl Duhon	2		White
331.	Wallace Joseph Living	3		Negro
332.	Dudley Joseph Hebert	3		White
333.	Edmar Thibeaux	3		White
334.	Albert Louvierre	8		White
335.	Paul Dunand, Jr.	3		White
336.	Felix Henry Foreman, Jr.	3		White
337.	Nolan Joseph Winters	3		Negro
338.	Richard Gerald DePew	3		White
339.	Rayburn Dale Ocamb	10		White
340.	Joseph Hypolite Rivore	3		White
341.	Charles Albert May, Jr.	3		White
342.	Batson Boudreaux	3		White
343.	Joseph O. Trahan	5		White
344.	Paul Roy Girouard	5		White
345.	Charles Joseph Barras, Jr.	7		White
346.	Hardy J. Druand	3		White
347.	Nerry Comeaux	3		White
348.	Jessie James Guidry	3		White
349.	Andres Pouroiaux	3		White
350.	Claude David Martin	3		White
351.	Dougas Savoy	3		White
352.	Jimmy R. Gibson	10		White
353.	Allen John Anslem	3		White
354.	Floyd Anthony Meaux	3		White
355.	Werner Henke	3		White
356.	Nolan J. Badeaux	10		White
357.	Wilfred Jules Guidry	3		White
358.	Richard Crosby Sealy	3		White
359.	Loomis Joseph Dugas	1		White
360.	James Orland Underwood	3		White
361.	Donald George Hansen	10		White
362.	Kenneth Eldridge Toombs	3		White
363.	Edwin Lee Doyal	5		White
364.	Grant D. Carroll	3		White
365.	Joseph Ransom Malveaux	3		Negro
366.	Allen Anthony Bernard	3		White
367.	Dennis Racca	3		White
368.	Raymond Joseph Laurent	3		White
369.	LeRoy Francis O'Brien	3		White
370.	John Clanviele Savoy	3		White
371.	Billy Marion Ferriss	3		White
372.	Eugene Gerald Jumonville	10		White
373.	Dudley Joseph Hebert	3		White
374.	Lloyd J. Broussard	4		White

	NAME	WARD	PREC.	RACE
375.	Lawrence E. Foxworth	3		White
376.	Glen Cates			White
377.	Robert L. Miller	10		White
378.	Thomas Charles Menard	3		White
379.	Grifford Adam Cormier	1		White
380.	Eddie Benoit	2		White
381.	Elmer Roy Scales	3		White
382.	Joseph Clifton Young	3		Negro
383.	Anthony Simon	3		White
384.	Eric Joseph Granger	5		White
385.	Joseph Blanchard			
386.	Jerry Noel Begnaud	7		White
387.	Harrison Theall	2		White
388.	Charles O. DeJean, Jr.	3		White
389.	George Kermit Guindon	3		White
390.	August Bordovsky	8		White
391.	Donald M. Bailey	10		White
392.	Clarence White	6		Negro
393.	William Edward Leece	3		White
394.	George Joseph Martin	1		White
395.	Gilbert Ardoin	3		White
396.	James Calvin Breaux	3		White
397.	Marcel Brasseaux	6		White
398.	Arthur James Billeaud	1		White
399.	Kenneth Carlyle Jennings	10		White
400.	Joseph Merlin Gautreaux	1		White

[Filed this 28 day of Nov., 1967, /s/ Joyce Kebodeax
Dy. Clerk of Court.]

STATE OF LOUISIANA
PARISH OF LAFAYETTE

THIS IS TO CERTIFY that the attached list is a true and correct copy of the names used on the General Venire on July 25, 1967 for the purpose of drawing 20 names as proposed members of the Grand Jury to be in attendance on September 11, 1967; also, for the purpose of drawing 30 names for Petit Jury service on November 6, 1967; and, also for drawing 30 names for Petit Jury to be in attendance on November 27, 1967; also for the drawing of 30 names to serve as Petit Jurors on December 18, 1967; also, 30 names for Petit Jury service on January 15, 1968; also, 30 names for Petit Jury service for February 19, 1968.

From these 400 names, 25 negroes were placed in the box and 4 cards drawn show no race.

THUS DONE AND SIGNED this 14th day of November, 1967 at Lafayette Parish, Lafayette, Louisiana.

/s/ Oliver J. LeBlanc
OLIVER J. LEBLANC
Clerk of Court

A TRUE COPY ATTEST
Lafayette, La., 11-28-67

/s/ Joyce Kebodeax
Dy. Clerk of Court

[Filed this 28 day of Nov., 1967, /s/ Joyce Kebodeax
Dy. Clerk of Court.]

PER CURIAM—BILL OF EXCEPTION NO. 10

Defendant's Motion to Quash is without merit. On the question of inclusion and exclusion of Negroes, see State of Louisiana vs. Lucien Peters, 204 So. 2d. 284 and cases cited therein; and Brooks vs. Beto, 366 F. 2d 1, Cert. denied, 87 S. Ct. 1169, rehearing denied, 87 S. Ct. 1489 and cases cited therein; on the question of exclusion of women, see Article 402 La. Code of Criminal Procedure and Hoyt vs. Florida, 368 U. S. 57, 82 S. Ct. 159, 7 L. Ed. 2d. 118.

January 31st, 1969.

/s/ Jerome E. Domengeaux
District Judge

PRESENT:

HON. JEROME E. DOMENGEAUX
JUDGE PRESIDING

FOR THE STATE:

BERTRAND DEBLANC, ESQ.
District Attorney
Lafayette, Louisiana

FOR THE DEFENDANTS:

CLAUDE ALEXANDER, In Proper Person, represented by JOSEPH PICCIONE, ESQ.
Lafayette, Louisiana

LEE PERRY PRATT, In Proper Person, represented by WILLIAM LOGAN, ESQ.
Lafayette, Louisiana

OPEN COURT
LAFAYETTE, LOUISIANA

JANUARY 5, 1968

NOTE OF EVIDENCE
(Informal discussion off the record.)

RULING ON MOTIONS TO QUASH

BY THE COURT:

The Court in each case, after having heard the motions to quash, the Court now overrules and denies the motion to quash filed by the Defendant Claude Alexander and the motion to quash filed by the Defendant Lee Perry Pratt.

BY MR. PICCIONE:

Your Honor, in the case of STATE OF LOUISIANA -VS- CLAUDE ALEXANDER, Defendant Claude Alexander reserves a bill of exception to the ruling of the

Court on his motion to quash and particularly as to Counts 1, 2, 3 and 4 of the motion to quash and makes a [fol. 2] part of the bill of exception the motion to quash heretofore filed herein, the evidence taken at the trial of the motion to quash of the members of the grand jury and jury venire commission and the ruling of the Court and of course our exception to it.

BY THE COURT:

All right, let the objection and exception be noted.

BY MR. LOGAN:

Your Honor, in connection with Lee Perry Pratt we will make the same exception and reserve a bill of exception with specific note of the answer of the Clerk to the percentage of Negroes included on the venire as showing only 6.25 per cent.

BY THE COURT:

Okay, let the objection and exception be noted.

EVIDENCE CLOSED

* * * *

HON. JEROME E. DOMENGEAUX
JUDGE PRESIDING

FOR THE STATE:

BERTRAND DEBLANC, ESQ.
District Attorney
Lafayette, Louisiana

FOR THE DEFENDANTS:

CLAUDE ALEXANDER, In Proper Person, represented by JOSEPH PICCIONE, ESQ.
Lafayette, Louisiana
LEE PERRY PRATT, In Proper Person, represented by WILLIAM LOGAN, ESQ.
Lafayette, Louisiana

OPEN COURT
LAFAYETTE, LOUISIANA

NOVEMBER 10, 1967

MOTION TO QUASH THE INDICTMENT
(Informal discussion off the record.)

MR. PICCIONE: Mr. Landry, please.
Thereupon,

ERASTE R. LANDRY

was called as a witness, and having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. PICCIONE:

Q Please state your name and residence.
A Eraste R. Landry.
Q And your residence?
A Youngsville, Louisiana.

[fol. 2] Q Mr. Landry, what is your public office?

A Registrar of Voters, Lafayette Parish.

Q How long have you held that office?

A First time I went in 1937 through June, 1940, and I came back January, '48, until now.

Q Are you just about a lifelong resident of Lafayette Parish?

A That's right.

Q Mr. Landry, according to your knowledge of the registered voters of this Parish, can you tell us in close approximation the number of white people registered to vote and the number of colored people registered to vote as of, say, the past six months?

A You mean total of what I have on the book right now?

Q That's all right.

A We have forty thousand eight hundred and ninety-six total. Out of that we have six thousand five hundred and forty-one Negroes.

Q So presumably the rest would be white.

A Correct.

Q Now, would that be substantially about in the same proportion during the past six months?

A Well, we increased the last six months quite a bit.

Q You mean that the total number of voters has increased in the past six months.

A That's correct.

Q On the other hand, what about the comparison between the number of colored people as compared to the number of white people, is that about the same comparison?

A I would imagine so, yes.

Q It has held pretty steady for the past six months.

[fol. 3] A Yes, sir.

Q Mr. Landry, would it be to your knowledge and observation of the facts of life a correct statement that about half of the population of Lafayette Parish is female and about half is male?

MR. DEBLANC: We object to that. It calls for an opinion and he is not qualified to give an opinion as to how many males or females in the Parish.

MR. PICCIONE: That's almost something that Your Honor could take judicial cognizance of.

(Argument off the record.)

Q (By Mr. Piccione) If you know, Mr. Landry, can you say how many males are registered and how many females are registered?

A Well, that I don't know right now. I might have the record in the office.

Q You mean you probably have that count made in the office as such?

A Male and female?

Q I'm sure the Court would give you time to go look at it if you have it.

A Well, I have it. If the Court allows me, I'll go and get my record over there.

Q Except by checking the records you're unable to say about what the comparison is between male and female.

A No, not right now.

THE COURT: How long would it take you to determine that from your records?

THE WITNESS: Well, I could find that out from my secretary right away.

MR. PICCIONE: If he has it, Your Honor, I would like to put it in the record.

[fol. 4] THE COURT: I would think if he has it it would be in order.

MR. PICCIONE: And that's all the questions, Your Honor.

THE COURT: Would you mind checking on that and they'll call you back.

THE WITNESS: Okay.

THE COURT: Does the State have any questions?

THE WITNESS: No questions, Your Honor.

(Witness excused)

MR. PICCIONE: Mr. LeBlanc.

Thereupon,

OLIVER J. LeBLANC

was called as a witness, and having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. PICCIONE:

Q Please state your name and residence.
A Oliver J. LeBlanc, Lafayette, Louisiana.
Q What public office do you hold, Mr. LeBlanc?
A Clerk of Court.
Q Are you also a member of the Jury Commission?
A Yes, sir.
Q Did you act as a member of the Jury Commission in drawing up a grand jury venire which made its return in the first week or two of September of this year?
A Yes, sir.
Q That would be the same grand jury that returned an indictment against Claude Alexander, do you know that, sir?
A Yes, sir.
[fol. 5] Q Yes. Mr. LeBlanc, are you familiar with the procedures followed by the Jury Commission in drawing up the venire of three hundred names for the grand jury?
A Yes, sir.
Q And you participated in that procedure?
A Yes, sir.
Q In drawing up the list of three hundred names, were any citizens of the female sex included?
A No.
Q In fact, all women were excluded, isn't that right?
A We didn't have any names submitted to us of any with the intention of willing to serve.
Q And you didn't look for any names of women to serve on the jury, the grand jury.
A That's right.
Q And none were listed on the grand jury venire.
A That's right.
Q And this may be a projection, but in fact you will follow the same procedure, will you not, when you select the petit jury venire?
A That's right.
Q Has that petit jury venire already been selected?
A Yes, sir.

Q For such jury that might sit on a case beginning on November 27, 1967?

A If it's the same time of criminal court.

Q Yes, sir.

A Yes, sir.

Q And is it a fact that on that petit jury venire as well as on that grand jury venire there were no women.

[fol. 6] A That's right.

Q And there are no women listed.

A That's right.

Q Now, Mr. LeBlanc, did you see the members of the grand jury that was empaneled on September 11, 1967 when this criminal term opened?

A I'm not familiar with the grand jury personally and I don't remember if I saw them because we have a lot of grand juries or petit juries and I might have not gone to court that date.

Q Mr. LeBlanc, I think that this may help you and I believe you furnished me or the deputy clerk furnished me with a copy of the twelve names, of the twelve men, who served on the grand jury for September 11, 1967. Do you recognize that list?

A Yes, sir.

Q And they are all men, are they not?

A Yes, sir.

Q Do you know them all to be white men or members of the Caucasian race?

A I'm not familiar with all of them, Mr. Piccione. I'm not sure if they are or not. I couldn't answer that.

Q You really don't have no knowledge whether they are all white or not.

A That's right.

MR. PICCIONE: Your Honor, I would like to offer in evidence this list of twelve names of the grand jury as empaneled on September 11th, the actual twelve members who were empaneled as identified by Mr. LeBlanc.

MR. DeBLANC: I have no objection, subject to its correctness, that's all.

Q (By Mr. Piccione) Mr. LeBlanc, are you satisfied [fol. 7] that this is a true and correct list of the twelve men, list of the names of the twelve men who were empaneled on the grand jury this year?

A This could be verified from the minute book. I can't say for sure.

Q Would you prefer to do that before you say?

A Yes.

MR. PICCIONE: I'd like to ask the Court to give Mr. LeBlanc time to do that so he can certify it and then I will offer it in evidence after doing that.

THE COURT: All right.

(Informal discussion off the record.)

Q (By Mr. Piccione) Mr. LeBlanc, in making up the grand jury venire, was any effort made to include in the grand jury venire members of the Negro race as well as members of the Caucasian race?

A We don't make selections, Mr. Piccione. We draw them out of the box indiscriminately.

Q You draw them out of the what?

A Out of the general venire box.

Q And how do they get in the general venire box?

A By putting them in the selection on questionnaires that comes to us, other list that we send out from the registrar of voter's list, names, submitted to us by members of the Jury Commission.

Q In other words, names submitted by the members of the Jury Commission itself of which you are a member.

A Yes.

Q Did you submit some names?

A No.

[fol. 8] Q Did the other members submit some names?

A Some time ago they did bring us a list of names that—to be considered by the Jury Commission as a whole.

Q And were they put in the venire box?

A Some of them were and some of them were not.

Q Was any conscious effort made to include members of the Negro race?

A We do not make selection from race. We just go to the questionnaires or by recommendations, one way or the other.

Q Now you said that list was put in the venire box. What list?

A The slips or list that are put in the general venire box are made from questionnaires that I mailed out.

Q Questionnaires?

A Yes.

Q That are mailed out to whom?

A To different people in the Parish.

Q And these questionnaires ask them to recommend—

A No, no, to fill in questionnaires to get their qualifications and occupations to see if they are qualified to serve on the jury.

Q Now, who is this questionnaire sent to? How is that determined?

A To the different people in the Parish by the registrar of voter's list and the telephone book, city directory, different lists that are submitted by school board or any list that we can find that we think we got address for the mixed race one way or the other.

Q In this instance here of this grand jury venire, the last one that we're talking about, was the list of regis-[fol. 9] tered voters from Mr. Eraste Landry's office used?

A It was.

Q Did that include the list of colored voters as well as white voters?

A It did.

Q Were any selections made from the list of colored voters?

A No selections were made from colored voters or white voters. They were taken if we thought that they were qualified to serve on the jury.

Q Were questionnaires sent to every member of the list indiscriminately or were only certain ones selected and questionnaires sent to them?

A The questionnaire was sent the first time to one out of every eight from the registrar of voter's list.

Q Do you mean that you selected the one out of eight or did you go down the list and take every eighth one?

A Took every eighth one. If it was a doctor or if it was a lady or if it was a school bus driver, the typist was instructed to take the next one.

Q In other words, if you hit an eighth one that appeared for some reason to be exempted you took the next one.

A Yes.

EXAMINATION

BY MR. DeBLANC:

Q Mr. LeBlanc, I gather from what you've said that you have a broad base from which you start. Is that correct?

A That's right.

Q Now you start off by taking every eighth name of the registered voters from the list in the registrar of voter's office.

[fol. 10] A Yes, sir.

Q Wherein there are approximately forty thousand persons registered.

A Yes.

Q And if the eighth name is a person who is exempted by the law of Louisiana, such as bus drivers, women, doctors, lawyers, then you go to the next name. Is that correct?

A Yes.

Q Now, then, what do you do with that name? What do you do with the name?

A We send them a letter.

Q Don't you make a card on them, too?

A We did, but then we found out it was best to wait until the questionnaires came in to make a card. Then we make a card after the questionnaires come in with the information.

Q But each one of those eighth names—this eighth name that you pick out, isn't a card ultimately made on him?

A Yes, that's right.

Q It's a little four by five card?

A Yes.

Q And you have possession of that card?

A Yes.

Q And they are put in like a card index?

A Yes, sir.
Q In alphabetic order?
A Yes.
Q So you have thousands and thousands of names?
A Yes.
Q Which were taken from the registrar of voter's list.
A That's right.
[fol. 11] Q And you take them out of there, the eight names, regardless of whether they're white or colored. Is that correct?
A That's right.
Q Now, then, you also take names from other lists like the telephone book?
A That's right.
Q You have taken names from the Lafayette telephone book which includes Lafayette, Broussard, Carencro, Youngsville, Duson and other rural parts of the Parish.
A That's correct.
Q In other words, you have a telephone book which covers all telephones in the Parish of Lafayette.
A Yes.
Q And you take names out of that.
A Yes, sir.
Q Now, you also have a city directory which you use of the City of Lafayette?
A Yes.
Q And you take names out of that.
A Yes.
Q Indiscriminately?
A Yes.
Q Now, you have other lists besides that that you take names from?
A The Jury Commission brought in some names.
Q People that they know themselves?
A Yes. And we sent questionnaires out. Of course it wasn't that many. But it was more or less a duplication of the list we already had.
Q You have a copy of that questionnaire with you?
[fol. 12] A I can get one.
Q Can you get it so we can see it?

A Yes.

Q Can you send somebody to pick one up, and also a sample of the card?

A Yes.

THE COURT: Off the record.

(Informal discussion off the record.)

THE COURT: Show that Mr. Eraste Landry is now back on the stand.

Thereupon,

ERASTE R. LANDRY

was recalled as a witness, and having previously been sworn, was examined and testified further as follows:

EXAMINATION

BY MR. PICCIONE:

Q Mr. Landry, can you state how many females were registered to vote in Lafayette Parish?

A Yes, sir. Out of the forty thousand eight hundred and ninety-six total registered, we had seventeen thousand eight hundred and three white males and we have sixteen thousand four hundred and eighty-three white females; we have in colored male, three thousand five hundred and seventy-three; colored females, three thousand and thirty-seven.

Q And that's as of right now.

A Yes, sir.

Q Would that proportion approximately have been maintained fairly well in the past six months?

A Yes, sir.

Q Mr. Landry, as a man who has lived in Lafayette [fol. 13] Parish for a long time, would you look at these twelve names and state if you know those people and are they white or colored?

MR. DeBLANC: We object to that unless he has—it's calling for an opinion.

(Argument off the record.)

THE COURT: You may answer.

THE WITNESS: The first one, Felix Henry Foreman, Jr., white man; Paul Douglas Perkins, I don't know him; James Francis Lavergne—I know them names but I don't know them people; Adam William Duhon; Floyd Meaux, I know him; Warren Trahan, I'm not sure I know him; John Raywood LeBlanc, I know him; Bobby Joseph Richard; Robert Arthur Anderson; Walter Frank Comeaux, I know him; Adam William Duhon; A. J. Szabo, I know him.

Q (By Mr. Piccione) All those that you know are white people?

A Yes, sir.

Q And there's none on there that you recognize as being colored.

A Well, like I say, I don't know them—

Q You don't know them, yes, sir.

MR. PICCIONE: That's all, Mr. Landry.

MR. DeBLANC: No questions.

EXAMINATION

BY MR. LOGAN:

Q Mr. LeBlanc says that he uses a list from your office in selecting names for potential jurors. Did you furnish him a list or does he actually use your cards?

A Well, he uses my cards. He sent a girl out there to type those cards.

Q Off of your cards?

[fol. 14] A Yes, sir.

Q Now, do your cards show the occupation of the person?

A Yes, sir.

Q Does it show his education?

A I don't know.

Q Does it show his race?

A Well, yes, it does.

Q Do you have a blank one of those cards that you could give us that that information was taken from?

A What you mean?

Q You don't have a blank card in your office of the kind that you gave Mr. LeBlanc to get the information from?

A Yes.

Q Could you furnish us one, please.

A Yes. You mean the application card?

Q Yes.

A Yes.

Q The card you would furnish in blank, all those would be filled in when someone registers to vote?

A Well, when he took it out from the office they were all typed, yes, sir; all in a file.

Q I mean, all the blanks were filled in.

A Yes, sir.

Q All right. Would you furnish us a blank card, please.

A Yes.

(Witness excused)

Thereupon,

OLIVER J. LeBLANC

was recalled as a witness, and having previously been sworn, was examined and testified further as follows:

[fol. 15] EXAMINATION (CONT'D.)

BY MR. DeBLANC:

Q I'd like to show you these cards which I mark state Exhibit "A". I'll put this one as "B". I show you this card, State Exhibit "A" and ask you if this is one of the cards you make up?

A Yes. We make this from the questionnaire.

Q And that card—and the questionnaire is sent to the people you get from the list, right?

A Yes, sir.

Q This is one of the names that you got from some of these many lists that you made copies from, right?

A Right.

Q And you send them each a questionnaire?

A Yes, sir.

Q I show you State Exhibit "B" and ask you if this is the kind of questionnaire that you send out?

A Yes, that's the questionnaire.

MR. DeBLANC: Now subject to substituting a certified copy of these, the State will move to introduce into evidence State Exhibit "A" and State Exhibit "B".

MR. PICCIONE: No objection, Your Honor.

THE COURT: Let both State Exhibit "A" and State Exhibit "B" be admitted and leave is granted for the purpose of substituting a photostatic copy of State Exhibit "A".

Q (By Mr. DeBlanc) Then when they send that questionnaire back filled up, then you use that information to determine whether or not that they are qualified for jury service. Is that correct?

A That's correct.

[fol. 16] Q And it's from these questionnaires and the returns from these questionnaires that you then select the three hundred names of the general venire. Is that correct?

A That's correct.

Q And you make any distinction there between races when you pick them out as long as they qualify?

A No, it makes no difference if they're white or black. As long as we think they can serve they're placed in the box.

Q And then of course after they're placed in the box, arbitrarily placed in the box, then when you take out the names from that box to be placed in the list, you make out your list for your petit jury and your grand jury, then those are drawn by lot out of the big box. Is that correct?

A That's correct.

Q So it depends on luck or chance as to what comes out of the box.

A That's correct.

Q As far as race is concerned, you could have all whites or you could have all black.

A That's a possibility.

MR. DeBLANC: That's all.

EXAMINATION

BY MR. PICCIONE:

Q Mr. LeBlanc, perhaps I didn't understand. Did you say that you sent the questionnaire out first and then from the questionnaire answered you made out the card, or did you make out the card first and then sent out the questionnaire?

A The first time we made the cards out, the second time we waited until the questionnaires came in and then made the cards from the questionnaires. Because in order to get the information we need on the card it's necessary [fol. 17] to get the questionnaires sometimes.

Q In other words, you had a list of people that showed you who to mail the questionnaire to; you mail the questionnaire and you got an answer and then you made out your cards.

A That's correct in some cases.

Q And from the cards is where your venire list of three hundred names came. Is that right?

A These are the cards we keep in the file as a record of jurors; however, the general venire is a small slip of paper that's typed.

Q Now, Mr. LeBlanc, does anything in the telephone book tell you who is white or colored?

A No.

Q Does anything in the city directory tell you who is white or colored?

A No.

Q Does your questionnaire ask the question, in fact, No. 8, race?

A Yes, sir.

Q It does?

A Yes.

Q Does it also ask sex?

A It does.

Q Does your card from which you make your venire list ask the question race in the upper right-hand corner?

A It does.

Q In other words, then, on the three hundred names that went into the grand jury venire, you would have a

record of the name and the address of that person and the race of that person.

[fol. 18] A No, not on the card that went in the general venire box.

Q Why not?

A It's a slip of paper only with the name and the address in the general venire box.

Q Yes, but in making the decision to put that name with that address in that general venire box, you knew at the time you placed it in there from the card, the card informed you whether they were white or colored, did it not?

A We didn't look at that, Mr. Piccione. What we did, we need a hundred names, say, to fill the general venire box, we get a stack of questionnaires and we just remove the clips and put the paper in the box the moment they are qualified.

Q Mr. LeBlanc, you say you didn't look at that, but still your questionnaire calls for race, your card informs you on race, am I not correct?

A That's correct. We have this on there because this is merely for identification of this particular individual.

Q Now, Mr. LeBlanc, do you know of your own knowledge the actual three hundred that were put on the grand jury venire for this term of court how many of them were white and how many were colored?

A I can't tell you that.

Q But the cards that correspond to their names would tell you that, wouldn't they?

A There's a possibility.

Q And you could look at that list you have in your office, the list of the three hundred names on that grand jury venire and you have the cards on those same individuals which says whether they are white or colored. Is that correct, sir?

A We have a card in file of these slips of paper that [fol. 19] we have in the general venire box.

Q And you could prepare a list or a certificate of those names and their races as shown by your records knowledge that the grand—that your jury commission

had at its disposal when it selected the venire. Isn't that correct, sir?

A You talk on three hundred which is what it should be. Of course the new law says not less than three hundred. Since we have so many juries to select we increased the list on the general venire to four hundred.

Q So are you saying in this case four hundred were selected?

A Yes.

Q So my question is, you do have a list of that four hundred and you can check the cards to find out and to put down what their races were. It could be determined how many were whites and how many were colored.

A It could be determined in a matter of a week or ten days.

MR. PICCIONE: Well, Your Honor, we move for the disclosure of that information because it's relevant to our motion to quash. We request the Court to please instruct Mr. LeBlanc as Clerk and ex-officio member of the jury commission to prepare a suitable certificate or list certifying to the names on the grand jury venire, four hundred or whatever it is, the addresses are not necessarily pertinent, but the names are and the races as shown by the white card and on questionnaires that Mr. LeBlanc has testified he has on every one of those names. Now he may not know of his own personal knowledge whether they are white or how many are white or how many are colored, but his records show and his records were before him and the other commissioners when the venire was [fol. 20] selected.

(Argument off the record.)

THE COURT: Let me defer ruling on that at this time.

EXAMINATION

BY MR. DeBLANC:

Q Can you tell us how many white persons and how many Negroes were sent questionnaires?

A No, sir.

Q You can't do that?
A No, sir.
Q You don't have that information?
A We sent five or six thousand letters out, but I don't know how many white or how many colored.
THE COURT: I gather from that, Mr. LeBlanc, that you pick every eighth name as you explained a moment ago without regard as to the race of that person. Is that correct?
THE WITNESS: Yes, sir.
THE COURT: It's for that reason then that you cannot say how many white questionnaires were sent out and how many colored questionnaires were sent out because they were chosen indiscriminately every so many names. Is that correct?
THE WITNESS: That's right.
Q (By Mr. DeBlanc) And you did not keep a list of that.
A I did not keep a list of that.
Q Now, you sent out how many questionnaires would you estimate?
A The first time I sent out approximately eight thousand.
Q How about the second time?
A The second time approximately three thousand. But both times we had about fifty per cent return mail.
[fol. 21] Q Both times fifty per cent returns?
A Yes.
Q Well, now, would you say that you had more returns from Negroes or from whites?
A Well, I would assume by looking at the questionnaires that we had more returns from the white people.
Q Could you say approximately how many more in percentagewise?
A No.
Q Would you say that there was a great number more of whites than Negroes?
A Well, working with the list we had in the percentage of registered voters together with the telephone book and city directory, naturally there was a greater percentage of personal mail to the white people than to the

Negroes. And for that reason it follows that we had larger replies from the white than from the colored.

Q But you did send this out indiscriminately—

A Yes.

Q —insofar as picking out the names of the voter registrants and picking out the names in the telephone directory and in the city directory.

A That's right.

Q Now the city directory has the names of every person who lives in Lafayette, do they not?

A Yes.

Q That's indiscriminately white and colored.

A That's correct.

Q So you would say then that while you sent out these cards indiscriminately to white—questionnaires, that is [fol. 22] to say, when you sent out these questionnaires, about eleven thousand, that you received about fifty per cent back and mostly from whites.

A Mostly from whites is correct.

Q Can you give us the number of white and Negroes from whom you received cards?

A No. I don't keep track of that.

Q From whom you received questionnaires.

A I have all the questionnaires that I received, but I don't know how many whites or how many colored. I haven't counted them.

Q Well, that's what we want to find out. Can you tell us that?

A That would take some time too.

MR. DeBLANC: I think that's as important as the other question.

MR. PICCIONE: I'd like to ask a couple of more questions, Your Honor, in general.

EXAMINATION

BY MR. PICCIONE:

Q Mr. LeBlanc, how long have you lived in Lafayette Parish, sir?

A I moved here in 1926, I believe, or '27.

Q And how long have you been Clerk of Court?

A Since 1944.

Q Mr. LeBlanc, I'm sure you consider yourself very well acquainted with the population of Lafayette Parish, do you not?

A Yes.

Q Can you state to the Court approximately what is the ratio in the population general of the white people as compared to the colored people?

[fol. 23] MR. DeBLANC: We object to that. He hasn't got that knowledge, Your Honor. He's asking for an opinion.

THE COURT: Well, if he knows.

THE WITNESS: I don't know.

Q (By Mr. Piccione) You couldn't give us an approximation?

A No.

MR. PICCIONE: Your Honor, we would like to offer, file and introduce in evidence the 1960 United States Census which I think does make that distiction of Lafayette Parish and I think it was amended in 1966.

(Argument off the record.)

Q (By Mr. Piccione) Mr. LeBlanc, is it correct then that at the time of sending out this questionnaire you and the commissioners were charged with the responsibility of preparing the venire and you all did not know the race of the people to whom you would send the questionnaire?

A That's correct.

Q You didn't even concern yourself with that factor.

A No.

Q Now when you got the questionnaire answered by whoever answered, then you were aware of their race, were you not, if they answered the question No. 8 on the questionnaire?

A We didn't look too much for the race. All we were interested in—

Q But you could have looked.

A We could have, yes.

Q And in fact the people that work for you, the secretarial help, were instructed by commission in preparing

the cards, fill all the blanks in the cards, including the [fol. 24] one that said race. Isn't that right?

A Yes.

Q So you recorded the information of whether they were white or colored.

A That's right.

Q And it was only after this recordation was made of identifying the race of the parties that you then from that list prepared the venire list of four hundred?

A No. The cards were made and attached to the questionnaires together with the slip of paper. The questionnaires that we thought could not serve were more or less rejected, and those that we thought could serve were all in one stack. If we need any names in the box, it makes no difference if they're white or black. They are taken and removed and the slip is placed in the general venire box.

Q Mr. LeBlanc, I agree with what you just said, but you didn't really answer my question. Let me rephrase it in light of what you said. Granted that some of these questionnaires and cards that were made from the questionnaire were rejected. You made a rejection of them for one reason or another that you felt they were disqualified. Am I right?

A Yes.

Q Now the remainder constituted answers to questionnaires, and white cards revealing the race of the party. And from this remainder of questionnaires and white cards you prepared the list of four hundred for the venire.

A That's right.

Q In fact they didn't come from any place else; they came from that list of white cards.

A That's right.

[fol. 25] Q So that whether you concerned yourself or not, the fact of the race of the party was there apparent for you to see on that white card.

A It was, but we didn't look at that.

Q Well, you either knew it or you could have known it.

A We could have.

Q And yet you're unable to say how many white and how many colored you got in the four hundred on the venire.

A That's correct.

Q You'd have to make a study of that and give us a list of it.

A Yes.

MR. PICCIONE: And we do move for that list. Your Honor, if I understand right the State has already offered the white card and also the questionnaire, so I don't have to offer them again.

THE COURT: That's right, and the white card we agreed to substitute a photostatic copy of it.

MR. PICCIONE: I'd like to make the white card and the green card offered by the State a part of my evidence as well. I would have done so if the State would not have done so first.

MR. DeBLANC: We have no objection.

EXAMINATION

BY MR. DeBLANC:

Q Mr. LeBlanc, when you select the three hundred names of the general venire, the rest of these cards are still there for you to select from should you need any additional names. Is that right?

A That's correct.

Q You have several thousand names there of people [fol. 26] who are available for jury service.

A That's right.

Q And when you need to replenish the three hundred names, you need to make a new list or anything like that, then you go back to your cards and your answers to questionnaires. Is that right?

A That's right. We keep a file of all of those we think are capable of serving, qualifying. Selecting the petit juries and grand juries, the moment we have to replenish the box we just take all the questionnaires we have and put them on the table and they just take them indiscriminately and replenish your box without any selection.

Q Because you know that all these people in your opinion are qualified.

A That's correct.

EXAMINATION

BY MR. LOGAN:

Q Mr. LeBlanc—well, first, I'd like to make the card and the questionnaire part of the evidence for Pratt.

THE COURT: So ordered.

Q (By Mr. Logan) Mr. LeBlanc, who are the members of the jury commission?

A J. Alfred Mouton, Mike Donlon, Dr. Carol Mouton, Andrus Martinez and myself.

Q Now, are all of those members of the Caucasian race?

A Yes.

Q You have no members of the Negro race.

A That's right.

Q Now, who presents the names to the Judge for signing the order to make them members of the jury com-

[fol. 27] mission? Who recommended names to the Judge?

A (No response.)

Q Do you as Clerk of Court do that?

A No.

Q Do you know who does?

A The Judge usually makes his own selection more or less or the Judge might get recommendations from the Clerk.

Q Did you make any such recommendations?

A No. We lost one last time. We were five and this new law requires that we're only four; five with the Clerk.

Q Well, now, do you know whether or not any names of Negroes were submitted to the Judge for appointment in the jury commission?

A Some of the jury commissioners been there for years. I wouldn't know about that.

Q Have there ever been Negroes on the jury commission?

A No.

Q Now, who prepares this questionnaire on jury qualifications?

A The District Attorney and I went over this.

Q Did the Jury Commission have anything to do with—

A We went over this with the jury commission, too. I submitted it to them.

Q And you all adopted that form as satisfactory to all?

A Yes.

Q Now, what does race have to do with the qualifications of the jury?

A Race has nothing to do with the qualifications of the jury. The reason we have race here is for identification of this particular individual.

[fol. 28] Q Why is the race put on your jury card?

A This card?

Q Yes, sir.

A This is also for identification, because we don't work with the questionnaires after we draw the general venire. We draw from the general venire the slips of papers. The slips of papers only has the name and the address and the ward and the precinct.

Q You draw from the general venire, but how does the card get in—the names get in the general venire?

A The cards are made when we make these cards—

THE COURT: When you say these cards, you're referring to a card similar to State Exhibit "A", right?

THE WITNESS: Yes. We have a small slip of paper made from these cards. We put them in the general venire box and they are drawn. In preparing the list we type the name and address from these other slips. If we're in doubt about this individual, we don't know if he's white or black, we see her black or colored, then we know just what individual we have drawn. We also can have the occupation for that particular purpose. A lot of people in this section of the country has the same name.

Q (By Mr. Logan) But you do as a fact know whether they are white or colored.

A Not from the slip of paper that is drawn from the general venire box.

Q But from the questionnaires and the cards that's used to make up the slip of paper to put in the general venire, you know whether they're white or colored. Is that correct?

A Yes. We can determine that.

Q Now, you stated that you used the registrar's card to make up your list that you make out?

[fol. 29] A Yes.

Q And the registrar's card shows what their race is also, doesn't it?

A Right.

Q Now, you stated that when these questionnaires came back you determined who—before you put them on the list you decided if you thought they were qualified.

A That's right.

Q What did you use in determining whether you thought they were qualified?

A He might be a doctor, he might be a school teacher, a school bus driver or he might come under the qualification that will exempt him.

Q Are the only persons that you consider not qualified were those that were exempted by law?

A No. Some of them didn't know how to read and write.

Q Other than read and write, did you exclude anybody else because of education or anything?

A Some of them were extremely nervous, hard of hearing.

Q You mean where they showed that on the questionnaires?

A Yes.

Q Were there any other reasons why they were excluded?

A There might have been others. They might be crippled or they might have put on the remark column where he can't sit a long time. There are a lot of other reasons that we thought he might claim exemption.

Q Do you have a list of the people to whom your questionnaire was mailed?

A No.

Q Was the questionnaire mailed to any women at all?
[fol. 30] A We have received some that was filled in by some ladies. I think one.

Q Did you mail any to any women intentionally or did you intentionally exclude women when you mailed them?

A We didn't mail any to the women.

MR. LOGAN: I'd like to also make part of my evidence the list which the Clerk is to furnish of the four hundred on the general venire as to whether they were colored or white. I'd like to make that part of my evidence. And that's all the questions I have.

EXAMINATION

BY MR. DeBLANC:

Q Mr. LeBlanc, you would include the names of any women who volunteered service. Is that correct?

A Yes.

Q And as I understand, the reason you did not include women is because they are exempted from service unless they specifically volunteer and offer their services. Is that right?

A Yes.

Q And all of the questions which are contained in the questionnaire deals with their qualifications to serve.

A That's correct.

Q And they were specifically drawn up and worded to make that determination.

A That's correct.

Q So if the questions showed to you that they were not qualified, you would put this questionnaire aside. Is that correct?

A That's correct.

Q And those you felt were qualified because of the [fol. 31] answers they gave, then you would put them as qualified and put their cards in the list of cards in the index where you could reach for them whenever you need them. Is that correct?

A That's right.

EXAMINATION

BY MR. LOGAN:

Q Were any invitations or notices sent to women advising that they had a right to declare their desire to serve on the jury?

A I've discussed that with the Assistant District Attorney and I've sent her at different women's clubs to explain to the women the possibility of being on the jury. The reason so far that the women have not served is because facilities and accommodations for ladies were not available in the old courthouse. But since the new place is being constructed we're working on the women to submit names and intention to serve.

Q In the past several years there have been some Negroes included in the general venire. Is that right?

A That's correct.

Q Have there been any repetition of the use of the names of the same Negroes through this period of time?

A If they didn't serve—sometime we use them again and we use not only Negroes, white also.

Q No, but some that have served have their names been replaced on the general venire?

A After a period of one year we usually replace those we want.

Q Has there been more replacing of Negroes on that list than white?

A I think if you go by percentage it's about even, I [fol. 32] would imagine.

Q Percentages of Negroes that have been reput on there as there are whites.

A That's right.

MR. LOGAN: That's all.

THE COURT: Referring to State Exhibit "B" which is a copy of the questionnaires that you made reference to. You testified of course how you went about it and the thousands of people that you sent these questionnaires out to, and you testified as to receiving some of the questionnaires back. You further testified that the commission of which you are a member, the jury commission of which you are a member, discarded some of the ques-

tionnaires based on the answers received having to do with physical, physical impairments, lack of being able to read and write, physical impairments and so forth. Now in discarding any of these questionnaires, was any consideration at all given to whether or not the person was white or colored?

THE WITNESS: No.

THE COURT: Absolutely none.

THE WITNESS: No.

THE COURT: All of the questionnaires that you kept after scanning those that were not qualified because of the reasons indicated, you made a white card on each of those you kept. Is that correct?

THE WITNESS: Yes.

THE COURT: Those white cards which are exemplified by State Exhibit "A", and I'm not holding you to numbers, they go into the thousands I presume.

THE WITNESS: Yes.

THE COURT: Now in getting to the three hundred [fol. 33] or more names which are included in your general venire, repeat again how do you get those three or four hundred names.

THE WITNESS: The questionnaires naturally come in. We make a white card and we also make another slip of paper with the name and the address.

THE COURT: Now, the slip of paper that you referred to, that's taken from State Exhibit "A".

THE WITNESS: Yes, sir.

THE COURT: That runs into the thousands.

THE WITNESS: Yes.

THE COURT: Now the slip of paper of which we don't have here, that slip of paper, all it includes is the name and the address. Is that correct?

THE WITNESS: The ward and the precinct.

THE COURT: That slip of paper has no designation as to occupation, race and age or anything else.

THE WITNESS: That's correct.

THE COURT: Now from that point, how do you get the three or four hundred names that are included in your general venire.

THE WITNESS: By just putting the questionnaires on the table that we think is qualified and just taking

them indiscriminately by punching and removing the card and the slip of paper and putting them in the general venire box.

THE COURT: These three or four hundred people that go in the general venire box are placed in completely indiscriminately.

THE WITNESS: Yes, sir.

MR. PICCIONE: Your Honor, that's not what he said. He said in answer to my question and answer to your question that from the questionnaires and the white [fol. 34] cards that four hundred for the general venire box are picked and put in the general venire box—

THE COURT: You're wrong, Mr. Piccione.

MR. PICCIONE: Ask him again, Your Honor. He didn't say from the white slip. He said from the questionnaires.

THE COURT: What about the white slip, Mr. LeBlanc?

THE WITNESS: The white slip is attached to these in this order, and they are taken indiscriminately—

THE COURT: You mean the white slips are taken—

THE WITNESS: Away and placed in the general venire box.

THE COURT: At the time that you take the white slip which is devoid of any race, what if any knowledge does the jury commission have insofar as race is concerned in placing a particular white slip into the venire box?

THE WITNESS: They don't look at the questionnaires one way or the other if they're white or colored. They just take the questionnaires the way it is and put it in the box. It makes no difference if they're white or colored.

MR. PICCIONE: But if they look, it's there on "A" and on "B" too.

THE WITNESS: On there for purpose of identification only.

THE COURT: The question is, does the jury commission consider race in any form in placing the three or four hundred names into the venire list?

THE WITNESS: It makes no difference to them.

Q (By Mr. Logan) Do they know at the time that they place it in there the race if they care to look?

A I don't think they look, not the way they remove them from here and just putting them in the box because [fol. 35] they're working pretty fast and they've never yet discarded one that I know of.

Q You mean they take them in alphabetical order?

A They're not alphabetically. They just take them the way they come.

THE COURT: How long have you been following this system?

THE WITNESS: I'd say about two years.

Q (By Mr. Piccione) Mr. LeBlanc, you had mentioned that you had several thousand of these questionnaires that come back. Now you also mentioned that you discarded some of these before you ever made a white card on them. Isn't that true?

A Yes.

Q So you cut them down. About how many of them have they got left after you cut them down?

A I don't know. I've kept them all.

Q No, I mean by that about how many thousands or hundreds? What does it run to before you select the four hundred for the venire list?

A A couple of thousand I would say, Mr. Piccione.

Q All right. In other words, from a couple of thousand more or less you're going to select four hundred for the venire list. Am I right?

A Yes.

Q And all you're going to put in the venire box is a little slip of paper with a name and address. Is that right?

A Yes.

Q That's the slip of paper you referred to. Isn't that right?

A That's right.

Q Now, then, do you first select the four hundred that [fol. 36] you're going to put in that general venire and then make the slips of paper or do you make a slip of paper and pin it to all of two thousand cards and questionnaires?

A The slip of paper is made on the two thousand or whatever amount we work with. It's already made.

Q You got the two thousand in front of you, don't you?

A Yes.

Q And you have a questionnaire, you got a white card and you have a little slip of paper, all of it pinned together.

A That's right.

Q Now, do you then take them as they come or do you look at the information contained on the paper and then select four hundred?

A We take them as they come.

Q And you've seen the commissioners taking a look at them, haven't you?

A They might do that.

Q Well, they do look at them, don't they?

A It doesn't matter.

Q I mean, they do look at the name and they might see anything on there. You don't know what they see.

A That's right.

Q The proof of the result would be in effect whether or not or how many colored or how many white are actually included in the four hundred selected from the two thousand, isn't that so?

A That's right.

EXAMINATION

BY MR. LOGAN:

Q Mr. LeBlanc, you stated that you have the ward and precinct on there. Do you have these questionnaires [fol. 37] divided up by wards and precincts and select so many from each ward?

A No. When the questionnaires come in they usually put on there the ward and the precinct in which they live, and then we bill these cards together. But as far as selection by ward and precinct, we don't do that.

Q There's no distinction on ward and precinct when you select the four hundred for the general venire.

A No.

THE COURT: The main thing that this Court is interested in knowing is whether any consideration is given to the question of race in placing the four hundred or three hundred or whatever the amount is in the general venire.

THE WITNESS: The jury commission makes no distinction of race and color.

EXAMINATION

BY MR. LOGAN:

Q Do they know the race or color when they are selected?

THE COURT: He's testified and I'm satisfied that they're taking the matter from the beginning of the proceeding to the time that the three or four hundred names get in there, the final step, the question according to his testimony, the question of race is not considered.

BY MR. LOGAN:

Q When they select that slip, do they know or is it in front of them to where they can know what the race of a person is who they are selecting?

A It is in front of them, but I don't think that it makes any difference to them because in our discussion in the jury commission we well understood each other that there would be no distinction made for race.

[fol. 38] Q But you did discuss that question.

A We told them that regardless if he was white or black and he was qualified, it made no difference. They all know that.

(Informal discussion off the record.)

THE COURT: According to the motion made without objection, the Court orders Mr. LeBlanc to prepare and furnish a list of the three or four hundred names that are presently in the general venire box by race.

The Court further orders the Clerk of Court to furnish the number of whites and colored on the cards exemplified by State Exhibit "A".

MR. LOGAN: I'd like to make a motion that he also

furnish the race of each member of the grand jury panel which indicted these accused.

MR. DeBLANC: No objection.

THE COURT: The Court further orders the Clerk of Court to furnish the list of a designation of the members of the grand jury who indicted the accused by race.

BY MR. LOGAN:

Q Under Article 404 it says, "upon entering upon the duties the members of the jury commission shall take an oath to discharge their duties faithfully". When they were reappointed by the Judge, did they retake the oath or do they retake them each year or what?

A They took their oath when they were appointed by the Judge.

Q Recently?

A Yes.

MR. LOGAN: Thank you.

THE COURT: Show that the Court on its own mo- [fol. 39] tion with the acquiescence of both the State and defense states primarily in connection with the questions propounded by Mr. Logan to Mr. LeBlanc concerning the makeup and appointment of the jury commission, this Judge states that approximately five years ago when he took the bench that this Judge reappointed the then members of the jury commission who had been serving for some time prior, said members being Mr. Mike Donlon, J. Alfred Mouton, Andrus Martinez, Dr. Carol Mouton and Stanford Landry, and that these gentlemen were, as the Court recalls, periodically appointed through the years until the law concerning jury commissions was changed with the new Louisiana Code of Criminal Procedure in which instance the Clerk of Court who before had been an ex-officio member of the commission was now by law appointed to be a member of the commission and the commission provided for five members as contrary to the previous provision. In this instance the Court appointed —in this instance in view of the reduced number of the jury commission, the Court did not reappoint Mr. Stanford Landry but reappointed the other members the Court had referred to by name a moment ago.

EXAMINATION

BY MR. LOGAN:

Q At the time of the selection of the general venire, were all five jury commissioners present?

A Yes.

Q And do you know whether or not of your own knowledge whether or not the notice was sent to all of the commissioners as required by the statute?

A Right.

Q It was?

A It was.

[fol. 40] MR. LOGAN: That's all the questions I have.

(Witness excused)

MR. PICCIONE: Mr. Landry again, please.

Thereupon,

ERASTE R. LANDRY

was recalled as a witness, and having been previously sworn, was examined and testified further as follows:

EXAMINATION

BY MR. PICCIONE:

Q Mr. Landry, have you any knowledge of the population of Lafayette Parish? Do you know what it is?

A The population?

Q Yes, sir.

A It must be around a hundred thousand.

Q And of that population, do you have a knowledge bearing upon the proportion of colored people as compared to the white people in the population?

A Well, no, that I don't have. But I have a percentage of the State—

Q Of the entire State?

A Yes.

Q But not of Lafayette Parish.

A Each Parish.

Q What is the statistics that you're looking at there?

A That's a report from the Board of Registration in Baton Rouge.

Q In other words, it's an arm of the State of Louisiana. Isn't that right?

A Yes.

Q It's a record of an agency of the State of Louisiana.

[fol. 41] A That's right, Board of Registration.

THE COURT: Off the record.

(Informal discussion off the record.)

MR. LOGAN: I'd like to make it a part of the record for Pratt and we'll mark it Exhibit "D".

MR. PICCIONE: I offer it in evidence, Your Honor, as part of Alexander's case.

THE COURT: And what is it?

MR. LOGAN: It's the blank registration card from which Oliver LeBlanc obtained names to mail out his questionnaires.

MR. DeBLANC: No objection.

THE COURT: Let it be admitted.

(Witness excused)

MR. PICCIONE: Miss Agnes Felix.

Thereupon,

AGNES FELIX

was called as a witness, and having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. PICCIONE:

Q What is your name, please?

A Agnes Felix.

Q Where do you live?

A 100 Gilman Road.

Q Miss Felix, were you called as a witness before the grand jury in September, 1967 that indicted your son Claude Alexander?

A Yes, I did.

Q Did you testify before that grand jury?

A Yes, I did.
[fol. 42] Q Did you look at the grand jury?
A Yes, I did.
Q Were there any women on the grand jury?
A No, sir.
Q Were there any colored people on the grand jury?
A No, sir.
MR. PICCIONE: That's all.

EXAMINATION

BY MR. DeBLANC:

Q You were in that room and you didn't see any women in that room?
A Those who was typing.
Q But you didn't know whether they were members of the grand jury or not, did you?
A Yes, I did.
Q You saw some women in the grand jury room?
A Yes. They had one sitting right next to me.
Q Okay. So you did see some women in the grand jury room.
A She was the one that was doing the typing. And then they had another one sitting way in the back.
Q They had two women in the grand jury.
A Two women.
Q Now, they were all white?
A They were all white.
Q Do you know what an octoroon is?
A No, I don't.
Q An octoroon is a person who has one-eighth Negro blood. Do you know whether there were any octoroons in that room?
A No.
Q You don't know that.
[fol. 43] A I sure don't.
Q Do you know whether there were any quadroons?
A (No response.)
Q Do you know what a quadroon is?
A I know they was all white.
Q They looked like they were all white to you?

A They were all white.
Q But can you tell a quadroon from—
A All I can say is they were all white.
Q In your opinion they were all white.
A I know they were.
Q How do you know that?
A Well, I know. I was looking at them.
Q You studied books on—
A I don't have to study books to know white from colored.
Q So you're sure about that.
A They were all white.
Q And you don't know what a quadroon is.
A I don't want to know that. But I still say they were all white.
Q Do you know what a mulatto is?
A No.
Q You don't know what—
A I can tell you they were all white.
Q So you don't know whether there was any mulatto on there.
A I don't guess I'm crazy. I could see they were all white.
Q Answer the question.
A Well, I'm answering the question. They was all white.
Q Do you know whether there were any mulattoes on there?
[fol. 44] A They were white.
MR. DeBLANC: I wish she'd answer the question, Your Honor.
THE COURT: Answer if you know.
THE WITNESS: Well, all I can say they were all white. I didn't see no mulatto.
Q (By Mr. DeBlanc) You just said you didn't know what a mulatto was. Isn't that right?
A Well, of course I know what a mulatto is.
Q I thought you just said—the record shows that you said you didn't know what a mulatto was.
A I know they were all white.
MR. DeBLANC: We have no further questions from this witness.

EXAMINATION

BY MR. PICCIONE:

Q You know Miss Gilfoil the Assistant District Attorney?
A Yes, I do.
Q Did she question you?
A Yes, she did.
Q And was she one of the women you just referred to as being present in the grand jury?
A Yes.
Q And the only other woman you said was that secretary taking down the notes.
A Taking down the notes.
MR. PICCIONE: Thank you.

(Informal discussion off the record.)

(Witness excused)

THE COURT: Show that the record is left open for [fol. 45] the reports previously ordered and inclusion in the record as to the white/colored ratio or population in the Parish of Lafayette.

EVIDENCE CLOSED

* * * *

[fol. 426] MR. DeBLANC: The State announces out of the presence of the jury that it intends to introduce in evidence and through cross examination of the accused a confession and inculpatory statement which was made by the accused just a little while after the occurrence of the offense, and that it now announces its intention to show the voluntary nature of the confession and also [fol. 427] that the confession or statement was given by the accused and that at that time, at no time, was his constitutional rights violated.

MR. PICCIONE: Your Honor, to which declared intention the defense objects on the ground that the alleged confession is not proper, in the first place, in the manner in which it was taken and is against the constitutional

rights of the accused and is particularly objectionable because it is against Miranda -vs- Arizona on the various warnings that should have been given thoroughly to him and on having consisted of questions not so much as answers and having consisted of something taken down which was not approved by the witness, by the defendant, which was not signed by the defendant at a time when he was in custody, in handcuffs, in the presence of hostile officers, at a time when his request to speak to his mother was not honored, at a time when he was under the pressures of fear and under police custody and otherwise in violation of Miranda, and that the fruits of such an illegal procedure are at no time admissible, not now, not on direct. It is certainly not admissible now on cross examination.

THE COURT: Is this a written statement or oral?

MR. DeBLANC: This is an oral statement.

THE COURT: Was this statement reduced to writing?

MR. DeBLANC: This statement was reduced to writing. The State will show the statement was reduced to writing, but was not signed by the accused, but that it was read by the accused, read to him and read by him, and that he approved of it but did not sign it.

THE COURT: It's the intention of the State then to introduce into evidence the statement and also as I un-
[fol. 428] derstand it to question the Defendant on the subject. Is that right?

MR. DeBLANC: On the subject as to whether or not they complied with the Louisiana law on the question of the voluntary nature of the confession or statement, inculpatory or exculpatory, and that it complied also with the Supreme Court decision and especially the case of Miranda.

MR. PICCIONE: Of course, Your Honor, our objection is additionally on the ground that it is not legally taken either under State law or Federal law, that it is not the statement of the accused and that's why he didn't sign it, but it's the statement of officers of what they would like for him to have said.

THE COURT: All right. Gentlemen, then, I would say that we're now ready for the State to proceed in its effort to show the validity of the statement, confession, inculpatory or exculpatory statement, whatever it may be.

The Court will now hear evidence on that subject to determine whether or not this statement, whatever its form is, complies with the recent United States Supreme Court decisions and particularly Miranda which I think is the last expression of the Supreme Court on that subject.

Is the State now ready to proceed?

MR. DeBLANC: The State now calls Capt. Picard.

EXAMINATION ON VALIDITY OF STATEMENT

Thereupon,

SHIRLEY PICARD

was recalled as a witness, and having previously been sworn, was examined and testified further as follows:

DIRECT EXAMINATION

BY MR. DeBLANC:

[fol. 429] Q State your name, please, sir.

A Shirley Picard.

Q And you are the same person who testified before in this case?

A Yes, sir.

Q Now, do you know the accused Claude Alexander?

A Yes, sir.

Q Do you see him in this courtroom?

A Yes, sir.

Q Would you point him out to the court?

A Next to Mr. Piccione.

Q Now, did you have occasion to see him and talk to him on September the 4th last year?

A Yes, sir.

Q Where was that?

A In the detective's office, City Police Station.

Q What time of the day or night was that?
A Approximately two thirty a.m.
Q How long did you talk to him there?
A Possibly an hour.
MR. PICCIONE: Of course, Your Honor, I believe that it's clear that my objection extends to all of this testimony.
THE COURT: Certainly.

(Informal discussion off the record.)

Q (By Mr. DeBlanc) Who was there when you talked to him?
A Officer Sidney Broussard and Officer Navarre, Anthony Navarre.
Q Were they there the entire time or part of the time?
A To the best of my knowledge they were, sir.
Q What?
[fol. 430] A They were there.
Q They were there at the time?
A Yes, sir.
Q Were they there during the entire hour you were talking with him?
A Yes, sir.
Q Now while you were talking to him, did he make any statement to you?
A Yes, sir.
Q Was this statement that he gave to you an oral statement or a written statement?
A Oral.
Q This statement which he gave, did you reduce it to writing?
A Yes, sir.
Q What type of writing?
A Typewritten.
Q Who reduced it to writing? Who wrote it out?
A I did.
Q Now at the time that he made this statement to you, did you or anyone else in your presence promise him anything?
A No, sir.

Q Did you or anyone else in your presence menace him, intimidate him or threaten him in any manner to cause him to give you a statement you said he gave?

MR. PICCIONE: Excuse me, Your Honor. I object to the question as containing conclusions and being leading. The witness can be asked what happened and we'll find out the facts from the lips of the witness rather than the conclusions from the lips of the asker, the questioner.

[fol. 431] THE COURT: I think that the State has the right to lay the proper foundation to determine the validity of it. The State certainly has a right to determine whether or not both the State law and the Federal law has been covered. I don't think it's leading. I'll overrule your objection.

MR. PICCIONE: I'd like to reserve a bill making a part of it the question of the District Attorney and the objection of counsel and ruling of the Court.

THE COURT: All right, let a bill be reserved.

Q (By Mr. DeBlanc) Did you or anyone else in your presence intimidate him in any way to cause him to give you the statement that you said he gave?

A No, sir.

Q Did any person in your presence or yourself subject Claude Alexander to any treatment designed by effect on body or mind to compel him to confess?

MR. PICCIONE: Same objection, Your Honor.

THE COURT: Same ruling.

MR. PICCIONE: Same bill of exception.

THE COURT: All right.

THE WITNESS: No, sir.

Q (By Mr. DeBlanc) This statement that he gave you on that day, was this statement given freely and voluntarily?

A Yes, sir.

MR. PICCIONE: Same objection, Your Honor.

THE COURT: Same ruling and let a bill be reserved.

Q (By Mr. DeBlanc) Are you familiar with what is known now as the Miranda warning?

A Yes, sir.

Q Did you or someone else give him that warning?

[fol. 432] MR. PICCIONE: Your Honor, I object to the continued nature of the leading questions. In fact the last question asked a legal question and I don't believe—

THE COURT: I think possibly you're right on that, Mr. Piccione.

You may ask him what he did in that connection.

Q (By Mr. DeBlanc) What did you do in connection with what is now known as the Miranda warning?

MR. PICCIONE: Your Honor. I don't think that the witness has been established as knowing what the Miranda warning is, and whether he does or not would not necessarily have any relevancy as to what he did on the occasion on taking the statement.

Q (By Mr. DeBlanc) Are you familiar with the Miranda case, the warning?

A Yes, sir.

Q Now, what did you tell him, if anything?

A I advised him he had the right to remain silent, that anything he said could be used against him in court, that he was entitled to an attorney, and if he couldn't afford an attorney one would be offered to him, and also that he had the right to stop talking at any time he felt like it.

And I also reached over my desk, I had a little typewriter table, I handed him the phone personally over my desk for him to use the phone and he said he didn't want to use it.

Q In other words, you gave him a chance to make a phone call.

A Yes, sir.

Q Now, tell the Court just exactly what were the facts upon which, without telling us what the statement is, the [fol. 433] facts upon which led up to your getting this statement from him.

A I asked him what happened in the park and he explained it to me, what took place in Girard Park.

Q Well, that was the question that you asked the accused?

A Yes, sir.

Q And he told you what happened in the park?

A Yes, sir.

Q Then how did you put it down?

A At first I was writing it down, hand writing it on a piece of paper.

Q And where were you getting the information to write?

A From Alexander.

Q He gave you the information?

A Yes, sir.

Q And after you got it written down with a pencil, what did you do?

A I told him that I was going to type it on the typewriter. He said, "All right". And after I finished typing it I read it to him, and after I read it to him I handed it to him and he looked at it for a while and he said, "That's exactly what happened".

Q And he didn't sign it?

A No, sir.

Q Did he say why he wouldn't sign it?

A He asked me where his shoes were and I told him I didn't know. He asked me again, I said, "I don't know". He said, "I'm not signing anything until I get my shoes", andche threw the pencil down.

MR. DeBLANC: We're tendering the witness to determine whether or not the statement which the man is [fol. 434] alleged to have given is true and voluntary and whether it complied with the constitution.

CROSS EXAMINATION

BY MR. PICCIONE:

Q Captain, where did this take place?

A In the detective's office, my office, at the City Police Station.

Q On Pierce Street?

A Yes, sir.

Q What time of day was that?

A About two thirty a.m. in the morning.

Q Well, now you asked him some questions?

A I asked him what took place in the park.

Q You were interrogating him, weren't you?

A Not at first. I asked him what happened and he told me.

Q You were questioning him?

A I asked him what happened in Girard Park.

Q I say, were you asking him questions?

A The only question I asked him was that.

Q Now, he had his handcuffs on?

A No, sir.

Q He didn't have his handcuffs on?

A No, sir.

Q Was he under arrest?

A Yes, sir.

Q He was in custody, wasn't he?

A Yes, sir.

Q Did you sit him down in that room?

A Yes, sir.

[fol. 435] Q You sat down?

A Yes, sir.

Q Now, do you remember when one of the other officers brought in coffee?

A No, sir.

Q You don't remember one of the other officers bringing in coffee?

A No, sir.

Q Well, do you remember that after one officer did bring in something that they left and only you and Claude Alexander were in the room alone?

A No, sir.

Q Do you deny that you and Claude Alexander were in the room alone when these questions and answers were given, if any answers?

A Yes, sir.

Q You deny that?

A Yes, sir.

Q Do you deny that for most of the time the other officers were not anywhere near that room, they were outside that room?

A Yes, sir.

Q You deny that?

A Yes, sir.

Q Is it not a fact that Claude Alexander told you he wanted to call his mother?

A No, sir.

Q And you failed to let him do so?

A No, sir. I handed him the phone, sir.

Q You deny that you did not let him call his mother?

[fol. 436] A He did not ask to call his mother.

Q And you say that Claude Alexander said, "That's what happened", but he yet refused to sign the paper that you drew up. Is that right, sir?

A Yes, sir.

Q He agreed to it but he didn't agree to it. Is that right, sir?

A He did not sign it, sir.

Q He didn't sign it.

A No, sir.

Q You signed it.

A Yes, sir.

Q And you so stated on your typewritten version that he refused to sign it.

A Yes, sir.

Q You asked him to sign it?

A Yes, sir.

Q And he refused. Is that right?

A I handed him the pen and he started to sign it. He said, "I want my shoes". I said, "I don't know where your shoes are". He asked me again and I said, "I don't know where your shoes are". Then he said, "I'm not signing anything until I get my shoes", and he threw the pen down. And I advised him that he didn't have to sign it.

Q Think back very carefully. When you showed him this statement, did he tell you this was not his statement, it was your statement?

A No, sir.

Q And for that reason he refused to sign it.

A No, sir.

[fol. 437] Q Now, what was the first question you asked him?

A I asked him what happened in the park, in Girard Park.

Q All right. Now, how long after that did you give him any warning?

A I gave him the warnings before I talked to him.

Q What was the first question you asked him?

A The first question?

Q Yes, sir.

A I told him—I advised him of his rights, then I asked him what took place in Girard Park.

Q Now, Capt. Picard, think very carefully. Did you tell him he had a right to consult an attorney before giving any statement?

A Yes, sir.

Q Now, you told him that?

A Yes, sir.

Q Now, think very carefully on this one. Did you tell him that if he couldn't afford, if he didn't have the money, and couldn't afford to hire a lawyer that the Court would appoint one for him before he had to discuss it and that lawyer could be present before you could question him and he wouldn't have to answer anything?

A I advised him that if he couldn't afford an attorney that one would be brought for him.

Q Did you tell him that?

A Yes, sir.

Q You say that under oath, Captain?

A Yes, sir.

Q You're not just saying that to try to get this confession in, are you?

[fol. 438] A No, sir; no, sir.

Q It's not a desperation at the last minute to qualify a confession that's rotten from the beginning?

A No, sir.

Q You know that Miranda case pretty well, don't you?

A I've heard it pretty much, yes, sir.

Q You've studied it?

A I read about it.

Q You studied it since you took that statement?

A I heard about it before the statement.

Q Who had this sheet for a voluntary statement printed? Did you have it printed?

A No, sir, the Lafayette Police Department.
Q Who worded the statement?
A Lafayette Police Department I presume.
Q Are those the words printed on there that you read to Claude Alexander?
A I did not read him the words on the statement, sir.
Q Did you tell him words to that effect?
A I advised him of his rights.
Q Did you tell him words to the effect of this statement?
A Yes, sir.
Q Is that what you went by, the words on this statement?
A No, sir.
Q You didn't use this to refresh your memory?
A No, sir.
Q Do the words on this statement say anything about him being advised that if he did not have the money to hire a lawyer one would be appointed for him by the State?
A No, sir.
[fol. 439] Q It doesn't say that, does it?
A No, sir.
Q But you say you said it.
A I said it, yes, sir.
Q Is it not a fact that in asking these questions you were leading him all the time saying "wasn't it this way", "didn't you meet so and so", "didn't you meet Allen Breaux", "didn't you all go in the park", "didn't you all see the boy and the girl", "didn't you all say let's go get them", "didn't you all have relations with the girl". Isn't that the way it was?
A No, sir.
Q And when Claude Alexander wouldn't answer, did you put down in substance the question as though he had affirmed it?
A No, sir.
Q As though he had approved your question?
A No, sir.
Q Isn't it a fact that the facts were contained in your questions, not in his answers?

A No, sir.

Q Now, Captain, is it not a fact that you repeatedly asked Claude Alexander if he had not raped the girl? You did that more than one time, you remember that?

A No, sir.

Q You deny that you asked him several times did he rape the girl?

A No, sir.

Q Did he not answer you repeatedly that he did not rape the girl?

A He never did state that he raped her.

Q He didn't say that he did?

[fol. 440] A No, sir.

Q Well, did he say he had intercourse with her?

A He said he was about to.

Q Now my question is this, did he not repeatedly say—

THE COURT: Excuse me, Mr. Piccione. I don't mean to cut you, but just for clarification, it seems that this hearing at this time is restricted—let me put it this way. Let me ask both of your opinions. Is it encumbent upon the Court at this time to be appraised of what the statement was or what its content was? It's my impression that we're here now for the purpose of determining whether or not this accused was given the proper warning as illustrated in the Miranda case prior to any statement that he made.

I think what this Court will be called upon to do is to determine whether or not the statement, exculpatory or inculpatory or oral or written, confession, was given freely and voluntary and under the warnings as indicated by the United States Supreme Court. I doubt whether or not this Court wants to hear what the statement was or the methods of interrogation at this time.

(Argument off the record.)

THE COURT: Miranda says nothing except that interrogation—and Miranda presupposes that interrogation cannot commence until such time as the proper warnings, three or four or five steps ahead of it, are given.

Assuming that I would allow this to go before the jury, I'm not indicating one way or the other, I want to hear everything including the accused on this, then I think you can go into every facet of it before the jury. This Court is only interested in knowing whether or not this [fol. 441] man was assured of his constitutional rights under Miranda.

(Argument off the record.)

Q (By Mr. Piccione) Capt. Picard, what kind of a chair was Alexander sitting in when you questioned him?
A A chair with a padded back.
Q And you were in the chair opposite him?
A Yes, sir, across the desk.
Q And where was Sidney Broussard sitting?
A Sidney was—it would be to my right.
Q Was he standing up or sitting?
A He was sitting. And Navarre would be to my left.
Q He had his pistol on?
A Yes, sir.
Q You had your pistol—
A I couldn't answer that, sir. He was in plain clothes.
Q Was Officer Navarre there?
A Officer Navarre was there.
Q Was he standing up or sitting down?
A He was sitting down at one time and he stood up.
Q How close was he to Alexander?
A Oh, the chair next.
Q He had his pistol on?
A Yes, sir.
Q Now, were there any friends of Claude Alexander in that room at that time?
A Sidney Broussard had his pistol on too.
Q Were any friends of Claude Alexander in that room at that time?
A No, sir.
Q So everybody in there were hostile towards him. Is [fol. 442] that right?
MR. DeBLANC: We object to that, Your Honor.

(Argument off the record.)

Q (By Mr. Piccione) Capt. Picard, you said that you told him something about his right to remain silent?

A Yes, sir.

Q And did he remain quiet and gave you no answer when you told him that?

A Not during that saying, no, sir.

Q In other words, he didn't say anything. You did the talking, didn't you?

A After I advised him of his rights I said, "What happened in the park?", and he told me.

Q In other words, you were advising him of his rights and telling him everything and he made no response. Is that right, sir?

A After I advised him of his rights I asked him what happened in the park and he told me.

Q Right. In other words, the first thing he started to say was when he began to tell you what happened in the park. Is that correct?

A He started from the beginning, yes, sir.

Q All right, sir. In other words, the first thing he said was when he started from the beginning of what happened in the park. Is that correct, sir?

A No, sir—

Q So that at no time did you get an answer from him on any election by him or any decision by him of whether he would freely talk. Is that right?

A When I asked him what happened in the park—

[fol. 443] Q He started telling you.

A Yes, sir.

Q But he didn't tell you that yes, he would agree to talk, did he?

A No, he just started talking.

Q All right, sir. And is it also correct that he just started talking about what happened in the woods and he never did respond to what you said about his rights to have a lawyer? He didn't say anything to the effect, "Well, I'll do without a lawyer. Whether or not I can afford one or whether the State will appoint one for me I'll do without one".

A He didn't ask for an attorney.

Q He just kept silent. Is that right, sir?

A He kept silent until he told me what happened in the park.

Q And as far as you could tell, do you even know that he really heard and concentrated and understood what you said to him about his right to counsel and if he couldn't afford one because he was an indigent that he would have one appointed by the State?

A I don't know what his thinking was.

Q In other words, he didn't express his thinking, did he?

A Not to my knowledge.

Q He said nothing to show you the state of his mind in response to your warnings until he began to say what occurred in the park, isn't that right, sir?

A No, sir.

MR. PICCIONE: I'll rest on that, Your Honor.

THE COURT: Does the State have any redirect on that subject?

[fol. 444]

REDIRECT EXAMINATION

BY MR. DeBLANC:

Q Have you had—did you take any kind of training insofar as knowing how to conduct interrogations are concerned?

A We had schooling, yes, sir.

Q What school have you been to?

A We had a few classes in the Inservice Training, and we went to Baton Rouge Police Department three days on investigation and in New Orleans, the Police Department.

Q Were some of the classes relative to interrogation of a—

A We had some schooling.

Q And what were some of the things they told you at those classes insofar as correct interrogation of suspects were concerned?

A First of all expressing the right—you have to notify the person arrested of his rights.

Q What did they tell you you had to do? What rights—

A To remain silent—the last schooling I went to was about ten years ago.

Q Well, have you had occasion to discuss the matter of correct interrogation of suspects since that time?

A Only of what we read in the books, sir.

Q Have you had occasion to read in the books about correct interrogation to comply with Supreme Court decisions?

A The Miranda case and the Escobeda.

Q You're familiar with that, the requirements?

A Yes, sir.

Q And have you had occasion to go to any monthly meetings of an organization known as the Fifteenth Ju-
[fol. 445] dicial District Peace Officer Association and heard lectures on that?

A I didn't make that, sir.

Q You didn't make that?

A No, sir.

Q Now after you gave him what you said was the correct warning of his rights, then what did he say insofar as understanding what he said?

MR. PICCIONE: Your Honor, I object to that because he already testified that he didn't say anything until he started talking about what happened in the park.

THE COURT: He's under redirect. I'll overrule the objection. The Court wants to get to the bottom of it.

Q (By Mr. DeBlanc) When you told him that, what did you do then? Did you stop a while? What did he do?

A After I told him of his rights I looked at him and I said, "What happened in the park?",—that's after I handed him the phone to use the phone.

Q But before you asked him what happened in the park you told him—you gave him the warning—

MR. PICCIONE: I object to the leading question, Your Honor.

THE COURT: I'll sustain that.

Q (By Mr. DeBlanc) At the time that you asked him what happened in the park, when in respect to that time had you given him the warning?

A Just before I advised him of his rights.

Q What did he say when you offered him the phone?

A He said he didn't want to use it.

Q Did you offer him the phone before you started questioning him?

[fol. 446] A I asked him if he wanted to use it.

Q Before you started questioning him?

A Yes, sir.

Q Did he seem to understand what you were saying when you advised him of his rights?

MR. PICCIONE: I object to that, Your Honor, as to what the accused understood.

THE COURT: You may state what your observation was.

Q (By Mr. DeBlanc) Did he appear to understand what you said?

A To me he did, sir.

MR. DeBLANC: We tender the witness.

RECROSS EXAMINATION

BY MR. PICCIONE:

Q When you said "to you", in other words you're acknowledging that that's your opinion. Is that right?

A It struck me that he understood what I was telling him.

Q That's your opinion.

A Yes, sir.

Q Now, Capt. Picard, I remind you that you are an officer of the law and the first type of person that should respect that law and I remind you that you're under oath and I as you to think carefully on this question. Did you on that occasion before you proceeded to discuss what happened in the park, did Claude Alexander say to you in effect or words to the effect, "Take me to the jail"—"take me to jail so I can get some sleep", words to that effect?

A No, sir.

Q Now, think about this. And do you remember telling him, "Not until you tell me what happened"?

[fol. 447] A No, sir.
Q Now, you've thought about that?
A Yes, sir.
Q And you deny that?
A Yes, sir.
MR. PICCIONE: No further questions, Your Honor.
MR. DeBLANC: That's all.

(Witness excused)

THE COURT: Gentlemen, it's 12:00 o'clock. Would you all agree rather then bring the jury back just to have the Bailiff—
MR. PICCIONE: No objection.
THE COURT: All right. We'll recess until 1:30.

(Thereupon a recess was taken until 1:30 o'clock p.m., of the same day.)

[fol. 448] AFTER RECESS

(The trial reconvened at 1:30 o'clock p.m., pursuant to the taking of recess.)

(Informal discussion off the record.)

MR. PICCIONE: We'd like to add to our objection of the pro-offered confession under which we are now getting the preliminaries this additional ground for our objection, Your Honor, that the State gave me written notice before the commencement of the trial and before the State's opening statement that it intended to use a confession and we received this notice of their intention.

The State put its case on the stand, the State did not endeavor to bring in the oral statement now sought to be introduced in evidence by way of cross examination of the accused.

The State rested its case without having made any mention of that statement that I was notified of an intent to be used by the State. The State rested is case without ever even trying to get it in and I object further on the ground that it now comes too late, as well as the previous grounds.

(Argument off the record.)

THE COURT: Let the objection be noted. Of course the outcome of that objection would depend of course upon whether or not the Court allows reference to the statement or introduction of the statement or both, either by way of direct testimony or by way of cross examination.

It would appear to me however, assuming that the statement would be admitted, assuming that it would be, it would seem to me that if it is legal, and the Court is by no means saying that at this time because the Court hasn't heard all the evidence on it, but it would seem to me that [fol. 449] the State would have the right to use it on the cross examination of the accused inasmuch as the accused has taken the stand.

So that would be my impression at this time. However, gentlemen, it all depends of course upon what the ruling of the Court is as to its admissibility in the first place.

MR. DeBLANC: The State now calls to the stand Sidney Broussard, Officer Sidney Broussard.

Thereupon,

SIDNEY JOSEPH BROUSSARD, JR.

was recalled as a witness, and having previously been sworn, was examined and testified further as follows:

DIRECT EXAMINATION

BY MR. DeBLANC:

Q Officer Broussard, do you know the accused Claude Alexander?

A Yes, sir, I know him.

Q You see him in court?

A Yes, sir.

Q Point him out to the Court, please.

A Right next to Mr. Piccione.

Q Now, did you have occasion to see Claude Alexander at the police station on the early morning hours of September the 4th last year?

A Yes, I did.

Q Where was that at the police station?

A In the detective room. He was in the room with Capt. Picard.

Q Would you describe that room, what it looks like? The width, the length and all that.

[fol. 450] A Oh, it would be approximately, I'd say, twelve by fourteen probably.

Q What is it used for?

A For interrogation purposes. It's used by the detective division.

Q Is that somebody's office?

A Right. It's Capt. Picard's.

Q That's Capt. Picard's personal office?

A Well, his division, detective division office.

Q Is there a desk in that office?

A Right.

Q Who uses that office regularly?

A Capt. Picard.

Q And where's this police station located?

A Off of—on South Pierce Street.

Q What floor is that on?

A First floor.

Q It's a one story building?

A Yes, sir.

Q Is this connected with the jail there?

A No, sir, it's not.

Q There's no jail around there?

A No, sir.

Q What's in that building besides this office here?

A Well, we have the radio room, ID room, men's and ladies' restroom, Chief of Police's office, Inspector's office, a small traffic department office, the kitchen, a lounge you can say, where we drink coffee; a coffee room.

Q It's more or less of an office building. Is that right?

A Right.

[fol. 451] Q Is that room smaller or larger than the rest of the offices?

A I wouldn't say it's any smaller than the rest. It's about the same as most of the rooms.

Q What kind of furniture do you have in there?

A Well, we have approximately two chairs, a desk and another chair behind the desk.

Q Now, who was in there when you saw Claude Alexander?

A Capt. Picard.

Q Could you state about what time that was?

A I'd say approximately two thirty.

Q Now, could you describe the accused, how did he look, how was he dressed? Could you?

A Well, he was dressed in a white T shirt, a dirty white T shirt, and a pair of brown pants when I seen him.

Q Now, did you hear any conversation between him and Capt. Picard?

A I heard Capt. Picard advise him of his rights.

Q Well, how did he advise him of his rights? What did he tell him?

A Well, he advised Claude Alexander that he had to understand his rights, that his rights were—he had the right to remain silent, that anything said against him could be used in court, he had a right to an attorney, if he didn't have an attorney one would be appointed to him, and he had the right to make a phone call, and also he had the right to—if he would answer questions, he had the right to stop answering questions any time he pleased.

Q Well, you heard him say that to Alexander?

A Correct.

[fol. 452] Q What did Alexander say, if anything, to this?

A He didn't answer out loud, orally. He sort of nodded his head.

Q And do you know if you or anyone else in your presence promised him anything to make him give the statement he's supposed to have given?

A No, sir.

Q Did you or anyone else in your presence intimidate him in any way to cause him to give that statement?

A No, sir, we didn't.

Q Did you or anyone else place him in fear of duress—

MR. PICCIONE: Objected to, Your Honor, as containing conclusions. He can ask the witness what was done and what happened.

THE COURT: I think I ruled on that this morning or a similar objection. I indicated that the State had a right to qualify the witnesses under the code—

MR. PICCIONE: Your Honor, my objection is that the questions are containing conclusions and that the facts ought to be there before the conclusion is there.

THE COURT: I'll overrule your objection.

MR. PICCIONE: I'd like to reserve a bill on that, Your Honor.

THE COURT: Let a bill be reserved.

MR. DeBLANC: Read the question to him.

(The pending question was read by the Reporter as above recorded.)

THE WITNESS: No, sir, we didn't.

Q (By Mr. DeBlanc) Let me finish the question. Did you or anyone else place him in fear of duress to cause [fol. 453] him to give you the statement he gave to Capt. Picard?

A No, sir.

Q Did you or anyone else menace him or threaten him in any way to make him give that statement?

MR. PICCIONE: Same objection, Your Honor.

THE COURT: Same ruling, and let a bill be reserved.

THE WITNESS: No, sir.

Q (By Mr. DeBlanc) Did you or anyone else subject him to any treatment designed by effect on body or mind to compel a confession?

MR. PICCIONE: Same objection, Your Honor.

THE COURT: Same ruling, and let a bill be reserved.

THE WITNESS: No, sir.

Q (By Mr. DeBlanc) This statement that you say he gave, you said he gave a statement to Capt. Picard, that statement was then a free and voluntary statement?

MR. PICCIONE: Same objection, Your Honor. That's a conclusion that the Court has to make and it's contained in a question that is leading.

THE COURT: I'll overrule the objection.

MR. PICCIONE: I reserve my bill.

THE COURT: Let a bill be reserved.

THE WITNESS: Yes, it was.

Q (By Mr. DeBlanc) Now when you got there, what was going on insofar as the conversation between Capt. Picard and Claude Alexander?

A None that I remember. In other words, when I walked into the room Capt. Picard was just sitting down in his chair.

Q They weren't talking to each other?

A Not that I recall.

[fol. 454] Q Okay. Now, then what was the first thing you heard Capt. Picard say insofar as the conversation to this man?

A The first thing he said?

Q How did this start off?

A Well, Capt. Picard stated that he had to understand his rights and he proceeded to advise him of his rights.

Q All right. Now after that and after he nodded, what happened then?

A Capt. Picard asked him what happened in the park.

Q And did he answer that question?

A Yes, sir, he did.

Q And was it then that he gave the statement that he gave?

A Correct.

Q Now, were you there for the entire statement or part of it?

A I was there for the entire statement.

Q Was anyone else there while he was giving that statement?

A Not that I recall, not the entire statement. I remember some officers walking in and out. I mean, the door opening.

Q Now, we heard you say that he told him that he was entitled to make a phone call. Did he make a phone call?

A No, sir. He said he didn't want to make a phone call.

Q Well, how was it offered to him?

A Capt. Picard advised him that he had a right to make a phone call and Capt. Picard picked up the phone and pushed it across the desk and Claude Alexander said that he didn't want to make a phone call.

Q Now the statement that he made, that you say he made, was it a written or oral statement?

[fol. 455] A An oral statement.

Q Was it reduced to writing?

A Yes, sir.
Q Who reduced it to writing?
A Capt. Picard.
Q How?
A While he was giving the statement, he took down notes.
Q In longhand with a pencil?
A Correct, and then he typed it up.
Q Who typed it up?
A Capt. Picard did, sir.
Q And after he typed it up, what did he do with it?
A He read it out loud to Claude Alexander.
Q And then after he read it out loud to Alexander, what did he do?
A He offered the statement to Claude Alexander to have him sign it.
Q Well, what did Alexander do?
A He said that being that we couldn't give him his shoes he wouldn't sign the statement.
Q Did Alexander indicate to you that he understood what Capt. Picard told him concerning his rights?
MR. PICCIONE: I object to that as being leading, Your Honor, and—
THE COURT: I'll sustain that objection.
Q (By Mr. DeBlanc) Well, after he explained his rights, did Alexander say anything or do anything?
A After his rights were explained, the only thing—he didn't say anything. He just nodded his head.
MR. DeBLANC: We tender the witness.

[fol. 456] CROSS EXAMINATION

BY MR. PICCIONE:

Q Mr. Broussard, you remember that night that you had hit this man on the head with your gun?
A No, sir.
Q You don't remember that?
A No, sir.
Q Do you know how he got the blackeye on his left eye?

A Not that I know of.

Q Oh, you mean you didn't see the blackeye on his left eye?

A No, sir, I didn't notice.

Q You didn't know about that?

A No, sir.

Q You did drop your gun on the pavement, didn't you, sir?

A Correct.

Q And that was when you were in first contact with this man, isn't it?

A No, sir.

Q This was not when you came in contact with him?

A No, sir. I hadn't touched him at any time I dropped the gun.

Q You dropped your gun before you came in contact with him?

A I dropped my gun after I had placed him under arrest and he was lying face down.

Q Now, you've attempted to state what Capt. Picard said to Claude Alexander. Now, let me see if I can help you to refresh your memory and I remind you that you're under oath and you're an officer of the law and if anybody [fol. 457] respects the law it ought to be officers of the law.

MR. DeBLANC: I don't think that that's necessary, Your Honor.

(Argument off the record.)

THE COURT: I think the objection is good, Mr. Piccione. I'll sustain it.

Q (By Mr. Piccione) Is it not a fact that Capt. Shirley Picard at no time said to this man that if he was poor and could not afford a lawyer that the State would appoint one for him?

A You're asking me if Capt. Picard did say that?

Q I'm asking you is it not a fact that he did not say that?

A No, sir. He advised him of his rights. He had the right to an attorney, if he could not afford one that one would be appointed to him.

Q You say those were his words?

A As close as I can put it.
Q And Claude didn't answer, did he?
A No, sir.
Q He didn't answer.
A No, sir.
Q You say that he told him he could remain silent.
A That's correct.
Q That anything against him could be used. That's what you said, isn't it.
A Correct.
Q You mean that he didn't tell him then what he said could be used against him.
A Pardon. Repeat that question?
Q I understood you to say that anything against him could be used. Now, is that correct?
[fol. 458] A Anything said that he said could be used against him in court.
Q Now, do you want to change your testimony?
A No, sir.
Q Are you correcting yourself now?
A No, sir, I'm not.
Q In other words, you're now saying that what he said could be used against him. Is that right?
A Correct.
Q And when he said that to Claude, Claude didn't answer.
A He didn't answer.
Q He didn't respond, did he?
A He didn't answer.
Q And you can't read his mind, can you, sir?
A No, sir, I can't.
Q And you don't believe that Capt. Picard has that kind of power either, do you?
A No, sir.
Q Now while you were in there, you said you were in there, did you have your pistol on?
A Yes, sir, I did.
Q Capt. Picard had his pistol on?
A I don't recall.
Q Was anybody else in there?
A Not that I remember or know of.

Q Officer Navarre was not there?
A If he was I didn't see him.
Q You didn't see him.
A No, sir.
Q Just you and Capt. Picard. Is that right?
[fol. 459] A Correct.
Q Is it not a fact that you left the room most of the time and Capt. Picard was in that room alone with Claude Alexander? Isn't that correct?
A No, sir, it's not.
Q You say you were in there for the entire statement.
A Correct.
Q That's a fact. Just you two and Claude Alexander. Is that right?
A Yes, sir.
Q The door was closed?
A The door was closed, yes, sir.
Q And every now and then some other officer came through. Is that right?
A They opened the door, yes, sir.
Q And in fact one officer brought in some coffee. Isn't that right?
A Not that I recall, no, sir.
Q You don't recall that?
A No, sir.
Q And they kept coming in and out?
A I've seen the door open several times, yes, sir.
Q And they had their pistols on?
A I couldn't answer that.
Q Now, I ask you still to see if your memory will not be refreshed. Do you recall Claude Alexander saying that he wanted to call his mother?
A No, sir, I didn't hear that.
Q You didn't hear that?
A No, sir.
[fol. 460] Q You think you heard everything that took place?
A I think so.
Q There weren't one, two, three people talking at one time?
A No, sir, not that I heard.

Q Do you recall that when the Sergeant wanted to question him he said, "Why don't you take me to jail so I can get some sleep"?

A No, sir.

Q Now, think about that.

A I didn't hear that at all, sir.

Q Are you trying to remember?

A Yes, sir.

Q You're trying to remember?

A Correct.

Q And you didn't hear him say in exhausted fashion that he wanted some sleep?

A No, sir, I didn't.

Q Did you hear Sgt. Picard after such a statement say, "Not until you tell me what happened"?

A No, sir, I didn't hear that at all.

Q You didn't hear that?

A No, sir.

Q But all during this time that Capt. Picard explained to him his rights, he didn't say a word. Isn't that correct?

A Correct.

Q And when the Sergeant began to question him, he had to ask him several questions before he gave one answer, didn't he?

A No, sir, not that I've heard.

[fol. 461] Q I don't know if I asked you this question. If I did please overlook it. But when you say that Capt. Picard told him that if he couldn't hire a lawyer that one would be furnished to him, Claude Alexander didn't answer.

A Correct.

Q You didn't hear a word from him.

A No, sir.

Q Now, I want to ask you this question. You stated a while ago that after this was written out by Capt. Picard that he, Capt. Picard, read it back to Claude Alexander.

A Correct.

Q Now, is that correct?

A That's right.

Q And if Capt. Picard said that he didn't read it but rather that he gave it to Claude and Claude read it, who would be right or wrong, you or Capt. Picard?

A Well, you're asking about my statement, sir. To me Capt. Picard read the statement.

Q In other words, that's your recollection.

A That's right.

Q Your recollection then is that Claude here didn't read the statement. Is that right?

A That's right.

Q Now the statement that you say Capt. Picard read, was it typed or was it written out in longhand?

A It was typed.

Q Typed by Capt. Picard?

A Yes, sir.

Q Written down by Capt. Picard, words?

A Capt. Picard was taking notes.

[fol. 462] Q He typed it from his notes. Is that right?

A Correct.

Q Now, you didn't see a recording machine taking down the questions and answers?

A No, sir, I didn't.

Q You all have a recording machine in the police department?

A We have one, yes.

Q You've got about five or six, haven't you?

A Yes, sir.

Q The Captain Improvement Commission has furnished you all with five or six of them, haven't they?

A I know of two that I know of.

Q And you all didn't use the recording machine for an important thing like that?

A Not that I know of.

Q Yes, sir. Even though it was available you all didn't use it. Is that right, sir?

A Not that I know of.

Q Well, was there a Court Reporter in there? Of all the Court Reporters we have available, did you all have somebody take down word for word the questions and answers and who said them?

A No, sir.

Q You didn't do that, did you?
A No, sir.
Q Capt. Picard made notes and he wrote it out and typed it out. Is that right, sir?
A Correct.
Q Now, where are his notes? Do you know where his [fol. 463] notes are?
A He must have it with him, I guess.
Q You think he's got his longhand notes or has he destroyed those?
A I wouldn't know that.
MR. PICCIONE: Your Honor, I'd like to move for a subpoena duces tecum for the longhand notes of Capt. Picard.
THE COURT: Does the State have any objection?
MR. DeBLANC: No, we have no objection. It doesn't seem to be a proper procedure.
THE COURT: It's my impression that the purpose of this evidence at this time outside of the presence of the jury is to determine whether or not the accused was given and warned of his constitutional rights and I don't think the content of the statement—
MR. PICCIONE: Well, Your Honor, until I see the notes I don't know whether it may not contain something about the warning. I'm interested in the warning.

(Argument off the record.)

THE COURT: You want to issue a subpoena or do it informally?
MR. PICCIONE: We'll do it informally. I could proceed with this witness.
Q (By Mr. Piccione) Mr. Broussard, you took the girl to the hospital, didn't you?
A Correct.
Q Well, you were at the Lady Of Lourdes Hospital while Claude Alexander was at the police station, isn't that right?
A I went to the hospital.
Q And when you came back from the hospital, hadn't [fol. 464] Capt. Picard already finished questioning Claude Alexander?

A No, sir, he wasn't.
Q He hadn't finished?
A He hadn't started.
Q You got there at the beginning.
A Correct.
THE COURT: Here's Capt. Picard.
MR. PICCIONE: Captain, have you got your longhand notes, if you took some longhand notes, when you questioned Claude Alexander?
CAPT. PICARD: No, sir.
MR. PICCIONE: Where is that?
CAPT. PICARD: I threw them away, sir.
MR. PICCIONE: You threw them away. I'd like for the record to show that.
THE COURT: All right, you may retire.

(At this time Capt. Picard retires from the courtroom.)

EXAMINATION (CONT'D.)

BY MR. PICCIONE:

Q And when as you say Capt. Picard read the typewritten statement, did the accused respond in any way? Did Alexander say anything?
A He answered "that's what happened".
Q He answered "that's what happened".
A Correct.
Q And what was his position at that time? Was his head up high or was he leaning down—
THE COURT: Mr. Piccione, I thought we had agreed that we were going to restrict this to the question of whether he was warned or not warned and whether he waived or did not waive—
[fol. 465] MR. PICCIONE: You don't think his physical and mental condition has to do with whether or not he—
THE COURT: Well, if that's the purpose I'll allow you to proceed.
Q (By Mr. Piccione) Well, what was his position?
A He was sitting down.

Q He was sitting down in a chair?
A Correct.
Q Were his eyes opened?
A That's right.
Q And did he sign the statement?
A No, sir, he didn't.
Q He refused to sign the statement.
A Correct.
Q And that impressed you as being an agreement that the statement was true and correct. Is that right, sir?
A Pardon?
Q By him refusing to sign the statement, that impressed you as his agreement that the statement was true and correct.
A No, sir, not to my opinion.
Q Well, in your opinion his not signing it indicated that he didn't agree with it. Isn't that right?
A He didn't say he didn't agree with it.
Q But he didn't sign it.
A He didn't sign it.
Q In fact, he refused to sign it.
A Correct.
Q Did you all then after the statement take him to jail so he could sleep?
A No, sir. After he refused to sign it he left the [fol. 466] room with an officer. He went to the ID room.
Q Took a picture of him then?
A I think so. I'm not sure.
Q Took his clothes?
A I couldn't answer that. I wasn't present.
Q How long was he in that room being questioned?
A I wouldn't know, sir.
Q You don't have any idea?
A You want an approximate answer?
Q Well, give me the best you can.
A I'd say approximately thirty, possibly forty-five minutes.
Q And how long had he been in that room before they started questioning him?

A I couldn't answer. He was already in the room when I entered the room myself.

Q He had been under arrest more than an hour, hadn't he?

A I wouldn't know, sir.

MR. PICCIONE: That's all, Your Honor.

MR. DeBLANC: No further questions. Well, just one more question.

REDIRECT EXAMINATION

BY MR. DeBLANC:

Q About what time was that about when you got through with the examination?

A I'd say approximately 3:00, 3:15; somewheres around that time.

RECROSS EXAMINATION

BY MR. PICCIONE:

Q Mr. Broussard, did you ask Claude Alexander any questions?

[fol. 467] A No, sir, I didn't ask him any questions.

Q How about at the scene when you first arrested him, did you ask him any questions?

A No, sir.

MR. PICCIONE: That's all, Your Honor.

(Witness excused)

MR. DeBLANC: The State will call Officer Anthony Navarre.

Thereupon,

ANTHONY NAVARRE

was recalled as a witness, and having previously been sworn, was examined and testified further as follows:

DIRECT EXAMINATION

BY MR. DeBLANC:

Q Will you state your name, please.
A Anthony Navarre.
Q And you are a City Police Officer?
A I am.
Q How long have you been so employed?
A Since November of 1964.
Q Do you know Claude Alexander?
A I do.
Q Do you see him in court?
A I do.
Q Would you point him out to the Court?
A Sitting to the right of Mr. Piccione.
Q Did you have occasion to see him during the early morning hours of September the 4th, 1967 at the police station, Lafayette Police Station?
A I did.
[fol. 468] Q Where was that?
A In Captain—in the detective office.
Q Whose office is that?
A Capt. Shirley Picard.
Q Would you describe that office for the Court? How big was it and what's in there?
A Well, there's a desk, a filing cabinet, also a cabinet with a glass type in front, three chairs and the desk behind the chair and two doors.
Q Two doors?
A Right.
Q Now, who was there besides Alexander on that morning?
A Capt. Picard and Sidney Broussard.
Q About what time of the morning was that?
A I could not guess. I did not look at my watch. I could not say what time it was.
Q Did you hear a conversation between the accused Claude Alexander and Capt. Picard?
A I did.

Q Well, could you state whether or not during that conversation Claude Alexander made a statement of some kind to Capt. Picard?

A He did.

Q Now that statement that you say he made, did you or anyone else in your presence promise Claude Alexander anything to induce him to make the statement you say he made?

MR. PICCIONE: Your Honor, because of the very serious burden that is upon the State under the thinking of Miranda -vs- Arizona, I want to make my objection very clear as to why I object to this question as a leading question. Because the burden is upon the State [fol. 469] to prove it and there is no other witness unbiased, there's no other witness but the accused as against the three policemen present, they ought not to be asked leading questions. The answers are not to be put in their mouth by suggestion and I urgently and sincerely urge this as an objection that goes to the merits of this question, that the facts of this ought to come from the mouth of the witness as to what was done, what was said, who said it, was there an answer, who answered, what did he answer; what was said, not did somebody force him, did somebody threaten him, did someone intimidate him. That requires an interpretation, it requires an opinion. I think it's objectionable.

THE COURT: Well, I think that we are faced with a situation that goes beyond the norm insofar as evidence is concerned in view of the fact that this is a presentation of testimony to determine whether or not certain facets and requirements of the law have been complied with.

Although the Court sees your point very clearly, and I can't say that the Court thinks you're completely wrong, however, I think that the procedure that's being employed by the State is all right. So I'll overrule your objection.

MR. PICCIONE: Your Honor, I'd like to reserve my bill of exception on that, and I make a part of it the question containing a conclusion, asking for an option, as being incompetent and leading and objectionable in view of the issue of the State.

THE COURT: Of course I think a lot of these adjectives are conclusions. The Court will agree with that. But the Court knows of no other way it can draw a conclusion. The only thing that this Court is interested in at this time is whether this statement, regardless of [fol. 470] what its format is, whether it's free and voluntary and whether or not the accused was warned of his constitutional rights as illustrated by Escobeda, Miranda and the other cases.

MR. DeBLANC: Could you read the question back to him, please.

(Thereupon the pending question was read by the Reporter as above recorded.)

THE WITNESS: I did not, nor did anyone else in my presence.

Q (By Mr. DeBlanc) Did you or anyone else in your presence threaten him, menace him or intimidate him in any way to cause him to give the statement he gave?

MR. PICCIONE: Same objection, Your Honor.

THE COURT: Same ruling.

MR. PICCIONE: And same exception making a part of it the question, the objection and the ruling of the Court.

THE COURT: Let the bill be noted.

Q (By Mr. DeBlanc) Did you or anyone else in your presence place him in fear or duress to cause him to give the statement you said he gave?

A I did not, nor did anyone else in my presence.

Q Did you or anyone else in your presence subject him to any treatment designed by effect on body or mind to compel a confession of crime?

A I did not, nor did anyone else in my presence.

Q Now, did you hear what Capt. Picard told him—

A I did.

Q —before he gave the statement to him?

A I did.

[fol. 471] Q What did he tell him?

A He advised him of his rights. He told him that he did not have to say anything and that if he chose to say

anything, whatever he said could and would be held against him. He advised him that he was entitled to a phone call, that he was entitled to Counsel, that if he did not have counsel, counsel could be appointed for him, and he was also told that if he chose to talk at any time during his conversation he could stop.

Q And did he choose to make a phone call?

A He did not.

Q Well, what did he say? Did he say anything to him that he didn't want to make a phone call?

A The telephone was made available to him.

Q How?

A It was picked up by Capt. Picard and placed in front of him. He pushed it away and said he did not wish to make a phone call. He said, "I do not want to make a phone call".

MR. DeBLANC: We tender the witness.

CROSS EXAMINATION

BY MR. PICCIONE:

Q Mr. Navarre, during the recess of the Court, were you among the detectives and officers that were in the elevator together?

A I was.

Q Capt. Picard was there?

A He was.

Q And Sidney Broussard was there?

A He was.

Q And when I came into the elevator, you all stopped talking. You remember that?

[fol. 472] A I was not in the elevator when you came in.

Q You were not there when I came in?

A I was on this floor. Do you mean when you were coming into the courtroom at one o'clock?

Q And there were only detectives and policemen in the elevator. Is that right?

A I was not there.

Q You were not there?

A No, sir.

Q You didn't hear the conversation?
A I did not.
Q You all weren't talking about Miranda -vs- Arizona?
A I was not present.
Q And what it requires to warn a man?
A I was not present.
Q When did you learn the warning that you just described in your words?
A I learned the warning that I just described in my words at Bunkie at the law enforcement institute.
Q And how long ago was that?
A Approximately a year.
Q About a year ago?
A In fact it's over a year because I was at Bunkie during Mardi Gras of last year.
Q And at that time the Miranda case was mentioned?
A It was.
Q You heard an explanation of it?
A We had a complete course on it.
Q You feel that you're pretty familiar with it.
A No, I'm not.
[fol. 473] Q You're not too familiar with it?
A No, sir.
Q Let me ask you a few specific questions. Were you in the room at all times that the questions were being asked?
A I was not.
Q You were not?
A I was not.
Q Well, you said you were there when the warning was given.
A I was.
Q What happened, did you leave then?
A I stayed for a while.
Q How long?
A I stayed to hear Capt. Picard ask him "make another statement".
Q "Make another statement" to him?
A Right.
Q How do you mean, "make another statement"?

A Well, he said something else to him afterwards.
Q Who said something to who?
A Capt. Picard said something else to Claude Alexander.
Q What was his statement?
A He asked him what happened in Girard Park.
Q He asked him what happened in Girard Park?
A Yes.
Q He asked him some other questions too, didn't he? He asked him a lot of questions, didn't he?
A I was not there during the interrogation itself.
Q Oh, you were not there during the interrogation itself?
A I was not.
[fol. 474] Q Then you don't know whether Capt. Picard asked any questions before you heard him give the warning. Is that right?
A I do.
Q You do what?
A I was there before he gave him the warning. He did not ask him any questions.
Q You asked him a few questions?
A I did not.
Q Did Sidney Broussard ask him a few questions?
A He did not, not in my presence.
Q Well, did Capt. Picard ask him a few questions before he gave him the warning?
A He did not.
Q Now when he was offered the telephone, do you remember him saying that—at any time. Do you remember Mr. Alexander saying he wanted to call his mother?
A I do not.
Q Do you remember at one time that he said, "Why don't you take me to jail so I can get some sleep"?
A I do.
Q You remember that?
A I do.
Q Now, can you enlighten us on whether he said that?
A He said that as Auxiliaryman Broussard and I were taking him—were preparing to take him to book him.

Q Now, this was before the statement was given to Capt. Picard. Is that right, sir?
A It was after.
Q That was after?
A Yes, sir.
[fol. 475] Q Now, you feel sure of your memory on that?
A I do.
Q And had you heard him say that same thing before then?
A I had not.
Q Or words to the effect that he was pooped and that he wanted to get some sleep.
A I don't recall that.
Q Did he say that once or more than once?
A Say what?
Q Did he say that he wanted to get some sleep once or more than once?
A I heard it only once.
Q And you were not there then when Capt. Picard said to him, "No, not until you tell me what happened".
A I don't recall.
Q You didn't hear him say that?
A I wasn't there. I don't recall that.
Q Were you there when the statement was typed up?
A I was.
Q Who typed it?
A Capt. Picard type it.
Q Did you see whether he wrote it down in longhand?
A I was there when he began writing it down.
Q Did you notice what he did with the paper that he wrote it down on?
A No.
Q Nobody used a recording machine?
A There was no recording machine.
Q No taping was made of it.
A There was no tape.
[fol. 476] Q There was no recording, right?
A There was no recording.
Q Nobody thought to go get the recording machine.
A No.

Q Nobody thought to call a Court Reporter.

A No.

Q Now, let's be a little more specific. When you said that Capt. Picard said to him in effect, "you can remain silent", "anything you say may and can and will be used against you". You heard him say that?

A I did.

Q And did Claude answer and say "okay, I understand"?

A He did. He said, "You don't need to tell me my rights. I know them".

Q He responded, he spoke up, and he said, "You don't need to tell me my rights. I know them". Is that right?

A Correct.

Q All right. Now, then, when Capt. Picard told him "you are entitled to an attorney, and if you can't afford one one will be furnished to you", you heard him say that?

A I did.

Q And Claude Alexander answered that he understood that and that he didn't want a lawyer.

A He did.

Q Now, you give me his words. What did Claude Alexander say?

A He said, "I understand my rights. You don't need to tell them to me".

Q "I understand my rights. You don't need to tell them to me". Is that right?

[fol. 477] A Correct.

Q And did he say what you indicated a while ago, "I don't need a lawyer", "I don't want a lawyer"? Did he say that?

A I didn't hear him say that.

Q Did you hear him say anything to the effect that he didn't choose to have a lawyer?

A He didn't say anything about a lawyer to the best of my knowledge.

Q Except what you said a while ago.

A Correct.

Q And he said that in answer to the question of Capt. Picard that he had a right to an attorney and if he

couldn't afford one one would be furnished to him. Is that right?

A He said that at the end of the entire statement of his rights.

Q Now, you're saying then that Claude Alexander when warned of his rights, he didn't just sit there mute and say nothing. He just didn't sit there dumb and say nothing. He did speak up.

A Correct.

Q He answered.

A Correct.

Q And he said he knew his rights and he didn't have to be advised of his rights.

A Correct.

Q That's what he said.

A Correct.

Q So if anybody testified that he said nothing when these warnings were given to him or if one man said that he said nothing but nodded his head, that isn't correct, is it?

[fol. 478] A I cannot answer for anyone else.

Q I beg your pardon?

A I cannot answer for anyone else.

Q You can only answer for yourself.

A Correct.

Q And that's your testimony under oath.

A Correct.

Q When you were in the room there with Capt. Picard, was Sidney Broussard there too?

A He was.

Q You had your pistol on?

A I did.

Q And he had his pistol on?

A He did.

Q Did Capt. Picard have his?

A He did.

Q Did any of you all have a billy club handy?

A No one had a club.

Q Did Claude have his handcuffs on?

A (No response).

Q You had brought him in, I believe.

A I brought him into the office, into that particular office.

Q Were the handcuffs still on him?

A They were taken off.

Q They were taken off when?

A I can't recall when they were taken off, but they were taken off before the statement, before he was advised of his rights. I recall that much.

Q Is that right?

[fol. 479] A Correct.

Q Did you all have some coffee while you all were in that conference room?

A We did.

Q Did Claude have any?

A He was offered some.

Q He didn't take any, is that right?

A I can't recall. I was called away several times.

MR. PICCIONE: That's all, Your Honor.

REDIRECT EXAMINATION

BY MR. DeBLANC:

Q When he said, "I understand my rights. You don't have to tell me", where were you sitting?

A I was sitting to his right, next to him. He was right next to me.

Q And where was Capt. Picard sitting?

A He was sitting in front of us behind his desk facing us.

Q And how many times did he say that, "I understand my rights. You don't have to tell me"?

A I recall him saying it once.

Q And is there anything else that happened there before he gave his statement that you haven't told us about?

A I believe Capt. Picard told him once that he didn't have to give a statement. I believe he said that he didn't need a statement from him. He didn't have to give one. I also recall that I was called away from the room several times, but I also recall once that he stated that he

wouldn't sign anything or wouldn't say anything further unless he was given his shoes. I recall that much.

[fol. 480] MR. DeBLANC: Thank you. That's all.

RECROSS EXAMINATION

BY MR. PICCIONE:

Q Was he ever given his shoes?

A I don't recall. He wasn't given his shoes in my presence.

Q He was barefoot at the time.

A Correct.

Q Now, you said that you were sitting in a chair right to the right of Claude. You mean your chair was right beside his like that?

A Correct.

Q And he was there and you were on his right?

A Correct.

Q And Sidney Broussard was right on his left. Is that right?

A Correct.

Q So you had an officer like that gentlemen there and he was here and they had another officer like me here and you had a small table here and you had another officer over there. Is that right?

A Not a table; a desk.

Q You had him surrounded by three officers. Is that right?

A Correct.

Q Was anybody else in the room?

A No one else was present.

Q His mother wasn't there?

A She was not.

Q His father wasn't there?

[fol. 481] A No, sir.

Q His lawyer wasn't there?

A Correct.

Q He didn't have a lawyer.

A I did not know.

Q Officer Navarre, did you put your arm on Claude one time there?

A I did not.
Q You didn't pat him on the shoulder?
A I did not.
Q You didn't pat him on the shoulder and say, "Go ahead and tell him about it"?
A I did not.
Q You didn't do that?
A I did not.
Q You didn't tell him that was the best thing for him to do?
A I did not.
Q You don't recall doing that?
A I did not do that.
Q In fact, you didn't talk to him at all, did you?
A I did not have any conversation at all while he was in the office.
Q You just listened.
A Correct.
MR. PICCIONE: That's all, Your Honor.
MR. DeBLANC: No more questions, Your Honor.

(Witness excused)

THE COURT: Off the record.

(Informal discussion off the record.)

[fol. 482] MR. DeBLANC: This is our evidence insofar as the voluntary nature of the confession or inculpatory statement and as well as the showing that his constitutionel rights have been complied with.
THE COURT: All right. Does the defense have any evidence?
MR. PICCIONE: Well, we call the only witness we have, Your Honor, and that's the accused.
THE COURT: All right.

EXAMINATION ON VALIDITY OF STATEMENT

Thereupon,

CLAUDE ALEXANDER

the Defendant herein, was recalled as a witness, and having previously been sworn, was examined and testified further as follows:

DIRECT EXAMINATION

BY MR. PICCIONE:

Q Your name is Claude Alexander?
A Yes, sir.
Q You're the Defendant in this case?
A Yes, sir.
Q You remember being arrested on September 4, 1967?
A Yes, sir.
Q Were you taken to jail—at least were you taken to the police station?
A Yes, sir.
Q Is that the one over here on Pierce Street?
A I think so.
Q Actually who took you there?
A I don't know the officer's name.
[fol. 483] Q You don't know the officer's name?
A I don't.
Q Now before you went up there, had you been injured in any way?
A Yes, sir.
Q How?
A Well, at least, the officer that picked me up in the park, he hit me.
Q He hit you with what?
A It either have to be his gun or his club or something.
Q Did you at any time see his gun?
A At least I saw him when he pulled it out.
Q Did you ever see his gun on the pavement?
A No, sir.
Q You don't remember that?
A No, sir.
Q Besides the officer hitting you with the gun, did you have any other fight with him, any other exchange with him?
A Yes, sir.
Q What was that?
A After I hit him I started running. I mean, when I stopped, he dove on me.
Q Did he hit you?

A We started tussling.
Q Now, were you all standing up or on the ground?
A We was on the ground.
Q What parts of your body hit the ground?
A My back, chest and my face hit it a couple of times.
Q Your face hit the ground a couple of times?
A Yes, sir.
[fol. 484] Q That made you feel real good?
THE COURT: Off the record.

(Informal discussion off the record.)

Q (By Mr. Piccione) Did anything else happen to you physically?
A Just when we got up, after we got through tussling, he handcuffed me from the back.
Q He handcuffed you behind your back?
A Yes, sir.
Q The two hands behind your back?
A Yes, sir.
Q Now, how long did those handcuffs stay on your two hands?
A Until I got in the office.
Q Were they taken off when you got to the office?
A Not just then.
Q Were they taken off before or after the interrogation?
A They was taken off during.
Q During the interrogation?
A Yes, sir.
Q During the time they questioned you?
A Yes, sir.
Q In the first part of it did you have your handcuffs on?
A Yes, sir.
Q Now, did they offer you to use a telephone?
A No, sir. I asked them.
Q You asked them?
A Yes, sir.
Q When you asked them, did you have the handcuffs on or off?
[fol. 485] A I still had them on.

Q Behind your back?
A Yes, sir.
Q And when you asked to use the phone, did you specifically say who you wanted to call?
A Yes, sir. I told them I wanted to call my mother.
Q How many times did you tell them that?
A Well, I asked them about twice.
Q Who did you say that to?
A Capt. Shirley Picard.
Q Who else was there?
A Well, at the time I don't believe they had anybody else in the room.
Q And did he let you use the telephone?
A No, sir.
Q He says he put the phone in front of you and you didn't care to use it. Is that true?
A No, sir.
Q Claude, when you got into that room did Capt. Picard talk to you?
A Yes, he did.
Q Now at the time he started talking to you, how did you feel physically and mentally?
A Well, after we got through—after the man had hit me on my eye with the gun, at least with something, and after we got through tussling in the park, I mean, I wasn't feeling good.
Q How did you feel?
A Well, I was sort of dizzy.
Q Dizzy?
A Yes, sir.
[fol. 486] Q Did you at any time say anything to the officers about that?
A Yes, sir.
Q What did you tell them?
A I told them why don't they take me to jail or let me go home, you know, get some sleep.
Q Did you feel sleepy?
A Yes, sir.
Q Did they take you to jail or let you get any sleep?
A No, sir. They took me to the police station.

Q And what kind of—did you sit down or lie down or what?

A I was sitting down.

Q You were sitting down?

A Yes, sir.

Q And were there other officers in the room when the conversation started?

A No, sir, not at the time.

Q Who was there?

A Just me and Shirley Picard.

Q Was Sidney Broussard there at any time?

A I think he came in afterwards.

Q Afterwards?

A Yes, sir.

Q After what?

A After Shirley Picard got through questioning me.

Q After he got through questioning you?

A Yes, sir.

Q When he began to question you, was Sidney Broussard there?

[fol. 487] A No, sir.

Q Was Officer Navarre there when he started to question you?

A He was out—I guess he was in another office because he wasn't there—I saw him when they brought me in.

Q Now, Claude, tell the Court in your own words what did Capt. Picard tell you.

A Well, after I asked him to use the phone he told me not until, you know—at least not until I tell him what happened in the park.

Q Was that before he said anything further—was that before he questioned you or after?

A Before he questioned me.

Q Before he questioned you?

A Yes, sir.

Q All right. Repeat that now. How did he say that?

A I asked him to use the telephone and he said not until I tell—"not until you tell me what happened in the park".

Q And when you made the remark that you wanted to get some sleep, did they respond to that? Did they say anything to that?

A Yes, sir. At least I did get sort of angry and I stood up. I said, "Why don't you take me to jail, I'm sleepy". Then the other officer opened the door and he waved them not to come in.

Q And who was that other officer?

A I don't know the other officer, but Shirley Picard waved them not to come in.

Q Capt. Picard waved the other officers not to come in?

A Yes, sir.

[fol. 488] Q Do you know the name of any other officer who may have heard you say that?

A No, sir.

Q The ones that were trying to come in there.

A Maybe they would have heard me, but I don't know.

Q They might have heard you.

A Yes, sir.

Q Do you know his name?

A No, sir.

Q All right. Now, tell the Court—Capt. Picard said he warned you. Tell the Court what he said to you.

A Well, I don't recall, you know, him telling me too much. He just asked me, started asking me what happened in the park.

Q He started asking you what happened in the park?

A Yes, sir.

Q Now, he says that he warned you about certain things. Now, what do you know about that? What did he warn you about, if anything?

A Well, if he did tell me anything I didn't hear it.

Q Did you answer him in any way?

A No, sir.

Q Did you tell him, "I understand that I can keep quiet. I don't have to say anything. And if I say something it may be used and can be used against me". Did you tell him that?

A No, sir.

Q Did you say to him, "I don't want a lawyer. I don't have a lawyer. I can't afford one and you can't

hire one for me. I don't want one". Did you tell him that?

A No, sir.

[fol. 489] Q Did you tell him that you understood that and therefore you would do without one. Did you ever do that?

A No, sir.

Q When he gave you the so-called warnings, did you answer him in any way?

A No, sir.

Q Did you understand what he was talking about?

A Like I told you, I was kind of dizzy and I was just about sleeping, you know.

Q Is that as best you can remember?

A Yes, sir.

Q Is that how you understood it?

A Yes, sir.

Q Did you understand what he was talking about?

A Well, not exactly.

Q Did that ever happen to you before?

A No, sir.

Q Did you ever have a similar experience?

A No, sir.

Q Now, did Capt. Picard write some things down in longhand?

A Yes, he did.

Q Did he ask you some questions?

A Yes, sir, he did.

Q Were his questions of the sort of "what happened", "what occurred", "what took place", or were they the sort of—or were they leading questions of the nature of "weren't you in the park", "didn't you rape the girl", and so forth?

MR. DeBLANC: I understand the purpose of this examination now is to determine the voluntary nature of it [fol. 490] and whether he's been advised of his constitutional rights. Now, we have not asked—

MR. PICCIONE: I will agree with that.

THE COURT: All right.

Q (By Mr. Piccione) Now, did he type that statement up?

A Yes, sir.
Q Did he do it that same morning?
A Yes, sir.
Q He had the typewriter right there in the office?
A Yes, sir.
Q You saw him type it up?
A Yes, sir.
Q Then did he hand it to you, the statement, or did he read it to you?
A He handed it to me.
Q Did he read it to you?
A No, sir.
Q Now, did you look at the statement?
A I glanced at it.
Q Did you take time to read every word of it?
A Well, I just read a few words.
Q You read some?
A Yes, sir. And they had something that I didn't say in the statement that he had typed.
Q They had something on there you didn't say?
A Yes, sir.
Q And when you saw that what did you do?
A He asked me to sign it and I stood up and I threw it down, threw the paper down, and I said, "I ain't signing something I didn't say".
[fol. 491] Q Q Did you sign it?
A No, sir.
Q Why didn't you sign it?
A Because I didn't tell him that.
Q Did they then take you to jail where you could sleep?
A No, sir.
Q You all then left the room. Is that right?
A Yes, sir.
MR. PICCIONE: That's all, Your Honor.

CROSS EXAMINATION

BY MR. DeBLANC:

Q As I understand it, he typed this statement up—from where did he get that information that he typed this statement up from?

A Well, most of that he was saying it himself.
Q He was what?
A Everything that he was typing down, I mean, he was just about saying it himself.
Q Well, was it something that he had written down with a pencil?
A Well, he'd ask me some questions sort of, you know, like, "did you rape that girl in the park". I told him no. I just came out and I told him no. Then he started writing. He kept on asking me questions and then I didn't say nothing else after that.
Q Well, he would ask you questions and then he would write something down.
A Yes, sir.
Q And then he kept on asking you questions and then he'd write something down, right?
[fol. 492] A Yes, sir.
Q And then after that he typed it up on a typewriter?
A Yes, sir, after he got through.
Q Were you there when he typed it on a typewriter?
A Yes, sir.
Q And then he took it and handed it to you.
A After he got through.
Q And then you read it and there's something in there you saw that you didn't say. Is that right?
A Yes, sir.
Q Well, you said you read a few words. About how many sentences did you read?
About four or five.
Q Four or five sentences?
A Yes, sir. I read just about half of it.
Q Oh, you read just about half of it?
A Yes, sir.
Q And then you stopped?
A Yes, sir.
Q Right in the middle of it?
A He asked me to sign it.
Q Yes, but then you were looking at it, right?
A Yes.
Q And there was something in there that you didn't want to—there was something in there that you read that you felt that you didn't say.

A Well, they had a lot of things in there that I didn't say.

Q I thought you said that there was something in there you didn't say.

[fol. 493] A Well, if I did say it it was a mistake; but I say "if".

Q You might have said it but you didn't mean to say it.

A That's right.

Q So some of the things that you read in there you said you—now don't tell me what you said—

THE COURT: This is something to be determined if and when this Court allows reference to be made to this statement. You're going into the contents of it now. Does this have something to do with the free and voluntary nature of it?

MR. DeBLANC: Yes.

THE COURT: Well, I don't know that I see it, but go ahead.

Q (By Mr. DeBlanc) You read the statement or half of it, right?

A Yes, sir.

Q Now what I meant to say was, when you read those words in the statement you understood what they meant, most of them.

A Most of them.

Q You just didn't agree with—as I understood it, you read half of the statement and then you stopped, right?

A Yes.

Q And then there's some of the things that you brought to his attention that while you may have said you didn't mean to say them.

A No, sir, I didn't say that.

Q Huh?

A I didn't say that. I said he was telling me some questions—I mean, he was asking me some questions.

Q Yes, but don't say what he said.

Q I ain't going to say what he said, but he was asking [fol. 494] me some questions and, you know, every once in a while he started writing down. And then after he got through typing it out he handed it to me and I read

half of it, I could say about half of it, and then when I got through I looked at him and I just stopped and I threw the pencil and the paper back to him and said "I didn't say it".

Q Some things in there—

A Most of it.

Q Well, now, why didn't you read the rest of the statement?

A Well, I got kind—I got angry because I didn't say what he had down.

Q Oh, I see. And then—so then you said you wouldn't sign the statement. But you don't know whether the other part of the statement was something you said or not. Is that right?

A Well, I read the other part.

Q Oh, you read the other part.

A Not that night.

Q When did you read that?

A Well, I read the statement.

Q Later on?

A Yes.

Q On another occasion or a little bit later that night?

A On another occasion.

Q Who gave it to you on another occasion?

A Well, my lawyer had one.

Q Did you understand what you read in the rest of the statement?

A Did I understand?

Q Yes, understand it.

[fol. 495] A Well, I didn't say that either.

Q Well, I'm asking you, did you understand what was down there?

A Did I understand what they had on the paper?

Q Yes.

A Yes, I understood what they had on the paper.

Q Now, before he wrote that statement down, didn't you all have a little conversation about something or other?

A Oh, he went and get some coffee. He saw somebody with some coffee.

Q Did you drink some coffee with them?

A No, sir.
Q They asked you to drink some, didn't they?
A That's right.
Q And you said you didn't want any coffee, huh?
A I said I didn't want any coffee. Like he was trying to bribe me or something, asking me if I wanted a cup of coffee.
Q Didn't you think maybe they were being nice to you to ask you if you wanted to join them in coffee?
A They couldn't be nice, I mean, if they asked me if I did this or if I did that.
Q But you said no, you didn't want any coffee.
A That's right.
Q Now, there was a phone there in that room, right?
A That's right.
Q And didn't he say to you, "Would you like to use the phone"?
A No, sir, I asked him.
Q Oh, you asked him?
A Yes, sir.
[fol. 496] Q Did he say okay?
A No, sir, not until—he told me, he said, "Not until you tell me what happened in the park".
Q Oh, not until then.
A That's right.
Q Well, who did you want to call?
A Well, my mother.
Q Did you finally call your mother?
A Well, they didn't even let me use the phone.
Q You never did call your mother?
A I never did.
Q I want to ask you if you can understand this when I ask you this question, and I'm just asking if you understand these words, you see what I mean. "You have the right to remain silent". You understand what that means?
A Yes, I do.
Q Well, what does that mean?
A Well, you have a right not to talk.
Q All right. "Now, anything that you say can and will be used against you in a court of law". What does that mean?

A I didn't hear that before.

Q But, I mean, what would that mean to you if I told it to you, "Anything that you say can and will be used against you in a court of law".

A I don't know.

Q You don't know what that means?

A I don't think so, unless I think about it.

Q You know what a court of law is?

THE COURT: Can you think about it maybe?

THE WITNESS: Yes, I could.

[fol. 497] Q (By Mr. DeBlanc) Well, think about it.

A Will you repeat that?

Q Why don't you read it yourself. Read it out loud.

A "You have the right to remain silent. Anything you say can and will be used against you in a court of law".

Q All right. Now, you understand what that means?

A It means anything that you say against yourself, that it can be used against you in court.

Q I mean, you understand all those simple words, don't you?

A Yes.

Q Now, what about the third thing there? Read that.

A "You have the right to talk to a lawyer and have him present with you while you are being questioned".

Q Well, now, you understand what that means, don't you?

A Yes. "If you cannot afford to hire a lawyer, one will be appointed to represent you before any questioning if you wish one".

Q Well, now, you understand those simple words, don't you?

A Yes, sir, I do.

MR. DeBLANC: We tender the witness.

REDIRECT EXAMINATION

BY MR. PICCIONE:

Q Claude, when you and Capt. Picard had the conversation before the statement came up, did he at any time say to you that if you couldn't afford to employ a

lawyer, in other words if you didn't have any money, if you couldn't afford to hire a lawyer that one would be appointed to you and furnished to you and that you had a right to have that lawyer present before you answered any questions?

[fol. 498] A No, sir.

Q He didn't say nothing like that. Is that right?

A No, sir, he didn't say it.

Q And if he did say that, you didn't hear it?

A Well, that's right.

Q Or you didn't understand it.

A Well, he—if he did say it I didn't hear it.

Q And if he did say it, did you ever give up your right to have a lawyer?

A No, sir.

Q Why did you want to call your mother?

A Well, I mean, at least, I was in trouble.

Q You were in some trouble.

A Yes, sir.

Q You wanted to tell your mother about it?

A Yes, sir.

Q You had something in mind, that maybe your mother could help you?

A Yes, sir.

Q Did you at that time even know a lawyer?

A No, sir.

Q And in fact you had no lawyer. Is that right?

A No, sir.

MR. PICCIONE: That's it, Your Honor.

MR. DeBLANC: That's all.

(Witness excused)

THE COURT: Gentlemen, in connection with this testimony outside of the presence of the jury which we have just completed having to do with the legality under our law of the alleged statement given by the accused, let me just make this statement for clarity. Insofar as [fol. 499] confessions generally are concerned, under the Miranda case which we've been talking about which is the last expression of the United States Supreme Court on the subject, I think I indicated earlier that by no

stretch of the imagination did Miranda indicate that confessions were no longer legal. Miranda very definitely states that confessions remain a proper element of law enforcement and that any statement given freely and voluntarily without compelling inferences is admissible. I think that's a basic statement as elicitated by Miranda.

Now insofar as this particular statement in this case, the Court concludes rather easily, certainly there was no evidence to indicate it to the contrary in my opinion, that there were any promises or threats or menaces or menacing statements, intimidations or any treatment accorded the accused to compel him to make the confession.

Now Mr. Alexander, the accused, indicated something that he was offered coffee and a cigarette and he presumed that to be a bribe. I think that would be stretching the point to a ridiculous nature, if this Court considered that that was a threat or a promise.

I think the United States Supreme Court recognized that their language indicates in the Miranda case that, they don't use a percentage, but their conclusion is that practically all of the confessions are gotten under a police atmosphere, a police station, interrogation room courthouse, any such building or room. And of course the majority opinion in Miranda was a five/four decision.

The intention back of Miranda was to eliminate what existed and may still exist and probably does exist to some extent as to some of the treatment that people who [fol. 500] were accosted or arrested were given by law enforcement officers in some instances. I don't think we can kid ourselves and say that these situations didn't exist. And certainly for that reason you can see the logic and the equity of the decision in Miranda insofar as the availability and the admissibility of confessions which were given under duress and under abnormal conditions and without a person being advised of their constitutional rights, particularly under the Fifth Amendment of the United States Constitution.

Now in this case Miranda does not indicate any specific method in which a waiver of rights may be given by an accused. They indicate a guideline as to warnings. In other words, Miranda says this, that an accused must be,

and of course I think Miranda presupposes also, I think it's clear by reading the decision that we're talking about a preinterrogation situation, an interrogation instituted and inaugurated by any law enforcement agency or officer. Miranda anticipates interrogation. Certainly by reading Miranda it does not by any means in my opinion indicate that police officers cannot interrogate one accused of crime or apprehended or in the custody of the officers.

They say that, Mr. Policeman, if you're going to interrogate this man you've got to warn him of his constitutional rights and that is to remain silent, he has the right to remain silent, he doesn't have to speak, but if he does speak, if he does indicate, that if he does, anything he says may be used against him in a court of law, that language or similar language, that he is entitled to an attorney to be present and that if he can't afford an attorney one will be appointed for him. Now that's a guideline that they indicate.

[fol. 501] Now in this case there was testimony and it's not—of course I'm a trier of the facts on this case to determine the legality of this thing. It's a difficult thing for a Judge to do. But it's difficult for me to say that these three police officers were lying. I can't say that. I think that all of us know that the Miranda and the Escobeda case has been on everybody's lips for the last—when was Escobeda, 1963, whatever it was, '62, '63—well, since that time and with the amplification by Miranda, those cases and their contents have been practically a byword in legal circles and in police circles. You can read the paper every day where you see the police departments are being made to comprehend and understand the requirements of the Miranda and Escobeda case.

So as I say, I don't think you have any police officer today who doesn't have some knowledge of the requirements of that case. I'm satisfied that the police officers in this instance, Capt. Picard, and as testified to by the other two officers, with some little variations I might say which are not at all unusual. I don't think—just like you can get three people that viewed an accident and you might

get three completely different versions as to the exact particularities of it.

I'm satisfied generally that the warning as required by Miranda was given and I'm going to further rule that this accused knew his rights and that he waived his rights in the absence of any particular direction on the part of Miranda which it does not include as to what is a waiver of rights—as I say, Miranda uses the word waiver, but Miranda does not say that it will be waived in such and such and such and such and such a way.

I'm satisfied that there has been a compliance with the [fol. 502] mandate of Miranda and I will consequently rule that the statement, and I don't know its format as I said as to whether its—it's been referred to as an oral statement, unsigned. But whatever it may be, I'm going to rule that it was legally gotten, that it was free and voluntary and that the accused—and that the requirements of Miranda were conformed to in this interrogation.

MR. PICCIONE: Your Honor, before reserving a bill, may I call to the Court's attention respectfully forty-nine and fifty-one in Miranda, Paragraphs 49-51, concerning waiver, Your Honor. If the interrogation continues without the presence of an attorney and a statement is taken, a heavy burden rests on the government, to demonstrate that the defendant—

THE COURT: Where's that, Mr. Piccione?

MR. PICCIONE: Your Honor, that's on page 1628 of the Volume—

THE COURT: All right, I have it.

MR. PICCIONE: A heavy burden rests on the government to demonstrate that the defendant—the government has the burden of proving that the defendant—

THE COURT: I've really considered all of that, Mr. Piccione, and there's another statement on the next page under fifty-five and fifty-seven. The Court is completely familiar with it. As I say, I made the decision and I think it's correct.

I think that Miranda must be approached, No. 1, equity, fairness and justice, but also the practical aspects of it and I don't think there's any question in my mind

that this is a proper situation and that Miranda has been complied with.

MR. PICCIONE: I wish to reserve a bill to the ruling [fol. 503] of the Court which I understand to have the effect of permitting the statement before the jury to go into an introduction of the confession or to define a confession for such weight as it may carry, we accept and reserve a bill of exceptions and make a part of it the evidence in its entirety that was taken out of the presence of the jury on the manner in which the statement was taken, the manner in which the accused was or to what degree he was warned of his rights, that entire record, up to this point, and make a part of it the ruling of the Court, the words of the Judge, and reserving our rights of course to delineate in briefs the basis of law of our objection.

THE COURT: All right, let that be noted.

Off the record.

(Informal discussion off the record.)

MR. PICCIONE: Add to my bill of exceptions the objections that I previously made in the opening of this record to the effect that the State had rested its case and that this effort to bring in the confession now comes too late.

MR. DeBLANC: First of all the State has given a copy of this statement which is oral but reduced to writing, but the State did give a copy under a prayer for over many weeks ago which we felt was necessary and appropriate. Then after that we also gave notice to him without the jury knowing it that we were intending to use this, so we have laid our foundation insofar as the requirements of law is concerned. But we're confronted with the situation where had we attempted to introduce this in the presence of the jury which we felt we could have done and had we not succeeded for some reason or other in proving completely to the satisfaction of the Court the admissibility of the evidence then we would have had a situation where we might have had reversible error so [fol. 504] that's why we asked that the jury be retired so that we could prove the voluntary nature of the con-

fession out of the presence of the jury and again prove it in the presence of the jury for the reason that they should be able to determine the weight to be given this confession.

THE COURT: Off the record.

(Informal discussion off the record.)

THE COURT: Let's take a short recess.

(Thereupon a short recess was taken, after which the following proceedings were had:)

THE COURT: Let's bring the jury back in, please.

(At this time the jury returned to the courtroom.)

THE COURT: Do you wish to waive the polling of the jury?

MR. PICCIONE: Yes, Your Honor.

MR. DeBLANC: Yes, Your Honor.

THE COURT: The accused was on the stand. The State may proceed.

Thereupon,

CLAUDE ALEXANDER

the Defendant herein, resumed the stand and testified further as follows:

CROSS EXAMINATION (CONT'D.)

* * * *

[fol. 524] Q (By Mr. DeBlanc) Now, you said that you told your lawyer what you had done that night and you told someone else. Who was that?

A I told my lawyer and two persons.

Q Who else you told?

A Well, Shirley Picard and—

Q Where did you tell Shirley Picard—you're talking about the police officer?

A Yes, sir.

Q Where did you tell Shirley Picard what you did that night?

A In his office.

Q Was anyone there when you told him that? Who was there when you gave this statement, told Capt. Picard what you did?

A Well, at the time they had nobody there.

Q Nobody else?

A No.

Q Did someone come in while you were talking to him?

A After we got through talking.

Q Who came in?

A Sidney Broussard.

Q Anyone else?

A No, sir.

Q Do you know Officer Navarre?

A Yes, sir.

Q Did he come around there?

A Well, I saw him when I walked in the police station.

Q Now, you gave this statement in what building?

A Uh, let me see.

[fol. 525] Q Is that the police station?

A Yes, sir, that's it.

Q In what room of the police station, do you know?

A Well, I know it was in a room.

Q What was in that room, do you remember?

A A desk and a couple of chairs.

Q Was there a couple of doors that went out of that room?

A I think two.

Q Two doors?

A Yes.

Q What time was that about?

A It was about twenty to two.

Q Twenty to two?

A Yes, sir.

Q How were you dressed?

A I had a white T shirt and a brown pair of pants and blue tennis.

Q Was that the same clothes you had on when you went to the Yarc Club?

A Yes, sir.

Q When you talked to him were you sitting down or standing up?

A I was sort of laying down.

Q Laying down?

A Yes, sir.

Q You were laying down on what?

A Well, at least, I was trying to lay down because I was tired and I was trying to get some sleep.

Q You were sitting on a chair, though, weren't you?

A Yes, sir.

[fol. 526] Q You were slouching in a chair sort of?

A Yes, sir.

Q Well, you're on a chair now. How were you sitting? Show the jury how you were sitting.

A Well—

Q You can't sit in that chair like that?

A Well, I could try.

Q Okay, try.

A I was sort of like this (indicating).

Q Okay. How did you give him that statement? He asked you questions and you answered them or what?

A Well, not exactly asked me questions.

Q Exactly what did he tell you?

A At least he tried to put words in my mouth.

Q Oh, I see. How long did this conversation last between you and him?

A Well, we ain't had no conversation, no kind of a conversation.

Q I mean, how long did this statement you have with him last?

A Well, about two thirty.

Q Until about two thirty?

A Yes.

Q Well, when he was talking to you, did he write anything down on a piece of paper?

A He did.

Q And did you see him type anything on a typewriter?

A Yes.

MR. PICCIONE: Your Honor, for the sake of the record, I would like to make it clear that it is clear that

[fol. 527] that I have before the Court objected to what we're now getting into to the questioning under his condition and the statements that we're now getting into on constitutional grounds, and we've reserved our bill of exceptions on any of this as being legally admissible in this trial.

THE COURT: And the Court has overruled your objection.

MR. PICCIONE: And we reserved our bill of exceptions.

Q (By Mr. DeBlanc) Then he would write. Where was he getting the information that he was putting on this typewriter, do you know?

A From a sheet of paper.

Q From the paper he wrote on?

A Yes, sir.

Q Now while you were talking to him like that, did somebody come in and bring coffee to people in there?

A Somebody did come bring some coffee.

Q Did they ask you if you wanted a cup of coffee?

A Yes, sir.

Q Did you drink one?

A No, sir.

Q You didn't want one?

A No, sir.

Q Did they offer you any cigarettes?

A Yes, sir.

Q Do you smoke?

A Yes, sir.

Q They offered you to have a smoke with them?

A Yes, sir.

Q Did you take any?

A No, sir.

[fol. 528] Q Now during this entire conversation you were seated in a chair, is that right, slouched in the chair?

A Yes, sir.

Q About what time had you gotten up that morning?

A Which morning?

Q The morning of, you know, the night before?

A The Sunday?

Q Yes.
A Well, about seven or eight o'clock that morning.
Q Now after Shirley Picard wrote this on a typewriter, did he show it to you?
A Yes, sir.
Q Did you read it?
A I read half of it.
Q You read half of it?
A Yes, sir.
Q Did you understand what was on there?
A Yes, sir.
Q Would you recognize this if you saw it, if I read it out to you what was said on this thing?
A Yes, sir, I would.
Q Did you tell him, "On or about nine p.m. or nine thirty p.m. last night I left my house"?
A Yes, sir.
Q Did you tell him, "I met Allen Breaux on Lillian Road"?
A No, sir.
Q Did you tell him, "We decided to go to the country club which is across the street from Betty's Diner on Gilman Road"?
A No, sir.
Q About how much of this, the part that you read, [fol. 529] was stuff that you told him and how much was not?
A Well, let me see—I didn't tell him exactly, you know, what you're telling me now.
Q Oh, I see. You could have told him the same thing in different words?
A I ain't told him the same thing in different words either. I told him something else.
Q You didn't tell him what I just said?
A No, sir.
Q Did you say, "Allen Breaux asked me if I wanted to go with him and break in a place at Girard Park where he works"?
A No, sir.
Q Did you tell him, "I told him okay"?
A No, sir.

Q Did you tell him, "We walked back to Allen Breaux's house between Lillian Road and Pierce Street"?

A No, sir, I didn't.

Q Did you tell him, "Allen Breaux took a crowbar from inside a 1956, '57 or '58 light greenish and white Oldsmobile and put the crowbar between his belt"?

A No, sir, I didn't.

Q Did you tell him, "Allen Breaux and I walked to Girard Park and when we got in the park on a road by the lake we saw a white boy and a white girl walking on the road by the ridge"?

A No, sir, I didn't.

Q Did you say, "Allen Breaux said, 'You want to go and get the boy and the girl', and I said, 'Okay' "?

A No, sir, I didn't say that either.

Q Did you say, "We walked up to the white boy and the white girl and the white boy told Allen Breaux if he [fol. 530] wanted his money he could have it"?

A No, sir, I didn't say that.

Q Did you say, "Allen Breaux took the money and hit the white boy in the face and the white boy fell down on the ground saying he couldn't see"?

A No, sir, I didn't say that either.

Q Did you say, "Allen Breaux told the white girl if she wouldn't do right he would have to shoot—he would shoot both of them"?

A No, sir.

Q Did you say, "The white girl told us if—she would give us more money if we would leave them alone"?

A No, sir.

Q Did you say, "The white boy said, 'Linda, do right and they are going to leave us alone' "?

A No, sir, I didn't say that.

Q Did you say, "Allen Breaux jumped on the white girl and threw her on the ground and pulled her dress off and got on top of her and went with her"?

A No, sir, Shirley Picard said that.

Q Did you say, "Allen Breaux stayed on top of the white girl for about forty or forty-five minutes"?

A No, sir.

Q Did you say, "I was about to get on top of the white girl when the cops came"?

A No, sir.

Q Did you say, "Allen Breaux ran down the ditch and I went in a culvert under the bridge"?

A No, sir.

Q Did you say, "The police shot at me and I told him [fol. 531] I was coming out"?

A No, sir, I didn't say that.

Q Did you say, "I came out and broke out running and the police caught me about two or three blocks away"?

A No, sir.

Q So what I read to you then you deny making that statement to Shirley Picard at the police station at approximately two thirty o'clock in the morning on September the 4th, 1967?

A That's right, I deny it.

Q Now, can you tell the jury what you told him if this is not it?

A Yes, I could. I told Capt. Shirley Picard that, at least, that I left—let me see. At least I started from about three thirty, four o'clock. I started about—I told him that when I left from my house I went to Truman Palace Cafe and that when I got there I met—at least I met Frances and we stayed there a few minutes and we left to go to her house—I mean, to my house.

Well, you know, he asked me my name and I gave him my name, he asked me my address and all that.

Q Go ahead with the story. Tell us what you told him.

A He asked me my name, my address, and then that's when he broke in. He said, "What happened in Girard Park"?

Q What did you tell him?

A I didn't tell him nothing.

Q You didn't tell him a thing?

A No, sir, not to—not when he got to that part there.

Q Well, where did he get all this thing, this thing that he told you and you didn't give him any information—

A Those are words that he tried to put in my mouth. [fol. 532] He wanted me to say that, but I didn't. That's why when he give the paper to me and I read it, he asked

me to sign it, and I just threw the pencil and the paper back to him and told him I didn't say that.

Q Well, then, there must have been something you said. Didn't you say a while ago that there was something that you said that was correct in there?

A Yes, sir.

Q Okay. Now, what is it in there that's correct?

A I told him—

Q You want to look at it?

A I could look at it.

Q Look at it and see which part of this statement you told him and which you didn't tell him.

A I told him that I left my house about nine o'clock, nine thirty, and I left to go to Carencro.

Q What else you told him?

A I told him my name, my address, you know, where I live at and all that.

Q Well, then, you must have told him something else, didn't you?

A No, we didn't talk that much.

Q You just told him about nine, nine thirty you left your house to go to Carencro?

A No, sir. I told him my name, my address and where, you know—I told him about when I met the girl and all that and that's when I told him I was sleepy, if he could bring me to jail or just send me to my house so I could get me some sleep because I was tired and that was it.

Q Well, did you tell Capt. Picard what happened to [fol. 533] you after nine thirty?

A Well, he asked me and that's as far as I got; that's as far as I got. Then he started asking me about what happened in the park and all that.

Q Well, in the meantime while you were telling him that, that's all you told him?

A That's as far as he would let me get.

Q And all this information that's on there was something that you did not tell him.

A No, I didn't tell him that but he tried to—.

Q Now, did he ask you to sign this statement?

A Yes.

Q And what did you tell him?

A At least he let me read it first, and he told me, he asked me if I wanted to sign it. And when I got halfway I threw it back to him, I threw him the paper and the pencil back to him, and I stood up and I told him that I wasn't signing it because I didn't say it.

Q Well, did you mention to him why?

A Yes, sir, because I didn't say what they had on this sheet of paper.

Q Did you mention to him anything about wanting to get your shoes back?

A Yes, sir, I did. I asked him where my shoes was.

Q Did you make that a condition? Did you tell him you would sign it if you would get your shoes back?

A No, sir. I asked him that when he was through questioning me.

MR. DeBLANC: Now, the State announces that it's going to ask the witness this question one more time with [fol. 534] the intention to impeach the witness' testimony.

Q (By Mr. DeBlanc) I'm asking you now, Claude Alexander, did you or did you not make the statement that I just read out to you to Capt. Shirley Picard on September the 4th, 1967, about two thirty o'clock a.m. in the Lafayette City Police office in the City of Lafayette?

A Not that statement there, but I made, you know—

Q That statement there.

A Not this one there.

Q You did not make that statement?

A I did not.

MR. DeBLANC: The State announces that it is going to impeach the testimony of the witness by the testimony of Shirley Picard and other officers.

We tender the witness.

MR. PICCIONE: Your Honor, is it necessary at this time that I proceed directly on this question of the statement or can I do that after the officers are heard?

THE COURT: Let me see you both, gentlemen.

(Thereupon counsel for the respective parties approached the Bench and conferred with the Court out of the hearing of the Reporter.)

REDIRECT EXAMINATION

BY MR. PICCIONE:

Q Mr. Alexander, on that morning that you were arrested, had you been hit on the head?

A Yes, sir.

Q And is that that blackeye that was shown in that photograph?

A Yes, sir.

[fol. 535] Q And how did you feel as a result of that?

A Well, I felt kind of dizzy.

Q Had you had any sleep that night so far?

A No, sir.

Q How did you feel as to sleeping?

A Well, like I said, I was just about sleeping when he was questioning me.

Q Before you were questioned on this occasion by Capt. Shirley Picard, did you say anything to him about wanting to get some sleep?

A Yes, sir.

Q What did you say?

A I said, "Take me to jail or take me home so I can get me some sleep".

Q And what did he answer?

A "Not until, you know, you tell me what happened in the park".

Q Not until who tells him what happened in the park?

A Not until I tell him what happened in the park.

Q Did you make any other request such as to use the telephone?

A Yes, sir.

Q What request did you make?

A I asked him to use the telephone.

Q To whom did you make that request?

A To Capt. Shirley Picard.

Q Who did you want to call?

A My mother.

Q Did he let you make the call?

A No, sir.

[fol. 536] Q Did you ever make the call?

A No, sir.

Q Now, did you sign this typewritten statement?

A No, sir.

Q Now actually when Capt. Shirley Picard was questioning you, did he type it first or did he write it down in longhand first?

A He wrote it down in longhand.

Q All right. And then he typed it from his longhand notes. Is that right?

A Yes, sir.

MR. PICCIONE: Your Honor, we move for a subpoena duces tecum on Shirley Picard for his longhand notes.

MR. DeBLANC: No objection.

THE COURT: All right, let such a subpoena be issued.

Q (By Mr. Piccione) Now, Claude, if you know, was there a Court Reporter there or a young lady or a man trained in stenography taking down the questions and the answers word for word?

A No, sir.

Q Did anybody take down your answers word for word?

A At least Shirley Picard was taking down some, you know—he was writing.

Q Do you know what he wrote down?

A No, sir.

Q All right. In view of what you read on this statement here, do you think he wrote down what you said?

A No, sir.

Q Is this what you said?

A No, sir.

[fol. 537] Q Now, did you give another statement the following morning—

A Yes, sir.

Q —after you had some sleep?

A Yes, sir.

Q Who did you give that statement to?

A To Sid Gilbert.

Q Detective Sidney Gilbert of Carencro?

A Yes, sir.

Q Now, how did he record your statement?

A Well, he took a little pad out of his pocket and he had a pen and—at least I think it was a tape recorder.

Q Describe the tape recorder.

A It was, you know, a little black object.

Q A little black object?

A Yes, sir.

Q What did you think it was at first?

A Well, I thought it was a radio at first.

Q Did you see him turn it on?

A Yes, sir.

Q Were there two little wheels that were turning?

A No, sir. At least I didn't see that, you know.

Q Do you know whether it was a tape recorder or not?

A No, sir. As far as I can say is that I saw him when he turned a knob.

Q Before you all started talking?

A Yes, sir.

Q And after he turned the knob he had it there on the table?

A Yes, sir. He had it sort of in the front of him.

[fol. 538] Q And did he ask you some questions?

A Yes, sir.

Q And did you then tell him what happened that night?

A Yes, sir.

Q Now, did you tell him what's contained on this statement here?

A No, sir.

Q What did you tell him?

A I told him that, you know, the same thing that I'm testifying today. That's what I told him.

Q You told him the day after this thing occurred that you're telling us in court today. Is that correct?

A Yes, sir.

Q Was anybody else there besides Sidney Gilbert?

A No, sir.

MR. PICCIONE: Your Honor, we move for a subpoena on Sidney Gilbert of Carencro, and subpoena duces tecum of what I believe to be a recorded statement, it

might be pertinent in this matter, taken on September the 5th—

Q (By Mr. Piccione) Was that the day after you were arrested or the same day?

A It was the Monday.

Q Was it still on that same day?

A Yes, sir.

Q What time of day?

A It was sort of in the night.

Q It was the night of Monday?

A Yes, sir.

Q All right, taken on September the 4th, 1967.

A Yes, sir.

[fol. 539] THE COURT: Does the State have any objection?

MR. DeBLANC: No objection.

THE COURT: All right, let a subpoena be issued to Sidney Gilbert and let a subpoena duces tecum be issued for the production of what?

MR. PICCIONE: Of the tape recording of the statement taken by him at that time from the defendant.

THE COURT: All right.

Q (By Mr. Piccione) Now, Claude, you've already answered the questions substantially that you didn't say these particular sentences that are typed on here and that you said what you did say to Capt. Shirley Picard.

A Yes, sir.

Q Now, who brought up the name Allen Breaux?

A Capt. Shirley Picard.

Q When Capt. Shirley Picard questioned you was anybody else present?

A Not at the time.

Q Were there some times when you all were alone and some times when you all were not?

A Yes, sir,—no, sir, they had some officers.

Q What other officers were around there?

A Well, they had some officers, you know, coming in and out.

Q Was Officer Sidney Broussard there?

A Well, I didn't see him.

Q You didn't see him?

A No, sir.

Q Was Officer Navarre there?

A He was in the police station but he wasn't in the [fol. 540] same room that I was in.

Q Well, when he questioned you essentially on this thing here, was anybody else in there besides you and Capt. Shirley Picard?

A No, sir.

Q Now, if it is stated later that Capt. Shirley Picard was on one side of you and Officer Navarre was on the other side of you, is that correct, when Capt. Picard questioned you?

A No, sir.

Q That's not correct?

A That's not correct.

Q When they questioned you, were you handcuffed or not?

A Not the, you know, the whole while.

Q Not the whole while?

A No, sir. They came and taken them off afterwards.

Q Now during the time that they were questioning you, how did you feel mentally?

A Well, like I said, I was dizzy and I was sleepy.

Q Were you having any trouble keeping awake?

A Yes, sir. My eyes, they were just about closed.

Q You told them that?

A Yes, I told them that.

Q Did you try to tell Capt. Picard what happened?

A No, sir.

Q Would he let you tell it?

A No, sir. He kept on interrupting, saying, "didn't you and this person do that" and "didn't you do this" and all that.

Q Was he suggesting to you, "didn't you do this or that"?

A Yes, sir.

Q Did he ask you, "Didn't you rape the girl"?

[fol. 541] A Yes, he did.

Q What did you tell him?

A I just nodded my head. I done like this (indicating).

Q Did you continuously and repeatedly answer that question, "Did you rape the girl", in the negative, that is that you didn't do it? Did you repeatedly deny that you raped the girl?

A No, sir.

Q Did you deny it, that you didn't do it?

A Yes, sir, I did deny it.

Q You did deny it.

A Yes, sir.

Q So that when his statement says that you said that you were standing in line, is that true or not?

A It's not true.

Q Do you know about how many times you indicated to him with your head or otherwise that you did not do it?

A At least after I nodded my head a couple of times telling him that it wasn't me, I didn't tell him that in words, but, you know, I was shaking my head. Then I sort of fell asleep.

Q When he gave you the statement back, the one you refused to sign, did you read it?

A Yes, sir.

Q Did it say in here that you denied that you said you did not rape the girl?

A Yes, I told him that I didn't rape the girl.

Q That's what you told him, but was that repeated in this written statement?

A No, sir.

[fol. 542] Q Now, Claude, did you make any other statements than the ones you have mentioned?

A No, sir.

Q That's the only statements you made?

A Yes, sir.

Q And at no time did you ever make a written statement either in your own hand or any written statement that you signed. Is that right?

A Yes, sir.

Q You have never signed a statement in connection with this matter.

A No, sir.
Q And when they took this statement of yours that's referred to here, was there a recording machine there?
A No, sir, not that I know of.
Q You didn't see them use a recording machine.
A No, sir.
Q The voices weren't taken down as far as you know.
A No, sir.
Q At that time had you been advised by an attorney?
A No, sir.
Q Was any member of your family present?
A No, sir.
Q Claude, have you told us the truth today?
A Yes, sir, I have.
Q Is that the truth?
A Yes, sir.
Q Can we depend on that?
A Yes, sir.
MR. PICCIONE: That's all.

[fol. 543] RECROSS EXAMINATION

BY MR. DeBLANC:

Q Did they take a picture of you that night?
A Yes, they did.
Q Was that before or after the conversation you had with Capt. Picard?
A It was after.
Q Afterwards?
A Yes, sir.
Q You were still sleepy then?
A Yes, sir.
Q How long afterwards did they take that picture of you?
A Well, it took about forty-five minutes.
Q About forty-five minutes afterwards?
A For them to question me it took about forty-five minutes. It was about fifteen—it was close to three.
Q When they took the picture it was close to three?
A Yes.

Q And where was it they took the picture?
A In another room.
Q Well, the picture that Mr. Piccione showed you and introduced in evidence, that's the picture that they took of you?
A Yes.
Q Is this the picture they took of you?
A No, sir. They took that picture of me, this one here, because I remember the next day my momma came bring me a black—pants with a black belt and they took a picture of me in a white T shirt and a brown pants. I made a mistake on that picture there this morning.
Q Oh, this was not the picture they took of you at [fol. 544] that time.
A No, sir. It was the other one with the white T shirt and the brown pants. They took that one the following day I think.
Q So this one was not taken that night.
A No, sir.
Q I show you this State Exhibit "A" and ask you if that's the picture they took of you.
A Yes, sir.
Q That's the picture?
A Yes, sir.
Q Do you see any marks on your face in that picture?
A Yes, sir.
Q Where?
A Right here.
Q You see a mark on your face?
A Yes, sir.
Q Where?
A On the left side of my eye.
Q Your left eye?
A Yes, sir.
Q You haven't been hit lately, have you?
A No, sir.
Q Well, where did you get that spot on your left eye?
A My left eye?
Q Yes.
A That was in Crowley about three months after they picked me up.

Q Well, you have—this dark object on your eye, that was there—at that time it was on your eye, wasn't it?
[fol. 545] A No, sir.
Q Oh, it was not?
A No, sir.
Q But this is the way you looked then at the time, this picture here.
A Yes, sir, but my eye was swollen.
Q Well, does it appear swollen to you in this picture?
A Yes, it does.
Q You were sleepy then?
A Yes, I sure was.
Q But this is not the picture that was taken that day.
A No, sir. It was taken the following day.
Q Now, were you mistreated in any way while they were asking you these questions?
A Well, I mean, you know, not exactly mistreated but, I mean, just the idea of him trying to bribe me by giving me—offering me coffee and a cigarette and all that.
Q Oh, he tried to bribe you by giving you coffee?
A Yes, sir, and a cigarette.
Q Well, except for trying to give you some coffee and cigarettes, they didn't mistreat you any kind of way.
A No, sir. They tried to talk—they kind of talked to me rough.
Q Well, how did you happen to fall asleep while you were being questioned?
A I was wore out.
Q They let you sleep a while?
A Well, they must have. I mean, I had my eyes closed.
Q He was trying to find out, as I understand, what happened in the park. Is that right?
[fol. 546] A Yes, sir.
Q All right. Now according to your testimony before this jury you were trying to be a good samaritan and try to help this woman in distress, right?
A Yes, sir.
Q Well, now, why didn't you tell him that?

A Well, I tried to tell it to him, but he kept on trying to put other words in my mouth.

Q But did you tell him that?

A No, sir. I mean, he didn't give me time to tell him. He kept on "didn't you and this person do this and that". He got me mad.

Q Now, you say Capt. Picard brought up the name of Allen Breaux.

A Yes, sir.

Q Well, who brought up the name of Linda?

A Well, it wasn't me. I mean, I didn't know the girl's name, me. It couldn't have been me.

Q Well, who could it have been that brought that name up?

MR. PICCIONE: Your Honor, I object to any reference to the name Linda. Unless I'm mistaken, I fail to see it mentioned anywhere in this statement.

MR. DeBLANC: "The white boy said, 'Linda, do right and they're going to leave us alone' ". That's Line 15.

We tender the witness.

REDIRECT EXAMINATION

BY MR. PICCIONE:

Q At the time you gave that statement, Claude, do you know whether or not Capt. Picard had talked to the young white boy? Do you know whether or not he had talked to the young white boy?

[fol. 547] A No, sir.

Q You had seen the white boy after you were arrested?

A No, sir.

Q Oh, you didn't see him in the park after you were arrested?

A No, sir.

Q You don't know whether the white boy had talked to the police or not.

MR. DeBLANC: Your Honor, we're going to object unless he makes it plain as to what white boy, what police, what statement.

Q (By Mr. Piccione) Well, did you see any white boy, any white boy, in the park after you were arrested?
A No, sir.
Q Or when they took you back to the station.
A No, sir.
Q You didn't see him at the station?
A No, sir.
Q Whether the police had taken his statement or not and he had informed them of anything, you don't know about that.
A No, sir.
Q Now, who brought up the name Linda?
A Capt. Shirley Picard.
MR. PICCIONE: Your Honor, that's all we have of this witness.
MR. DeBLANC: No further questions.

* * * *

[fol. 552]

STATE'S REBUTTAL TESTIMONY

Thereupon,

— SHIRLEY PICARD

was recalled as a witness, and having been previously duly sworn, was examined and testified further as follows:

DIRECT EXAMINATION

BY MR. DeBLANC:

Q Capt. Picard, do you know the accused Claude Alexander when you see him?
A Yes, sir.
Q Do you see him in court?
A Yes, sir.
Q Would you point him out to the jury?
A Right there, sir.
Q Did you have occasion to see and talk to him on September the 4th, 1967, at about two thirty in the morning?
A Yes, sir.

Q Where was that?

A Lafayette Police Station on Pierce Street.

MR. PICCIONE: Your Honor, I believe that technically speaking I'm obliged to repeat my objection to this line of testimony as being inadmissible against the accused for the constitutional reasons I have heretofore urged.

THE COURT: Yes, and the Court repeats that the Court has overruled your objection.

MR. PICCIONE: And we have reserved our bill of exceptions.

THE COURT: That is correct.

[fol. 553] Q (By Mr. DeBlanc) At that time did he make a statement to you?

A Yes, sir.

Q Was that statement that he made reduced to writing?

A Yes, sir.

Q How?

A Longhand and then I typed it.

Q And what did you do with your notes you had?

A I threw it away in the wastepaper basket.

Q Is that your regular procedure?

A Yes, sir.

Q I show you this instrument marked State Exhibit "A-13" for Identification—

MR. PICCIONE: Your Honor, I'm going to object to the witness being shown any paper unless it be first tied to how it's connected with the accused. The State has said they will offer an oral statement. Now here we see a written piece of paper. That's not oral. And I object to the witness being shown anything unless it's established by the proper foundation that this has anything to do with an oral statement.

MR. DeBLANC: We'll withdraw the question.

Q (By Mr. DeBlanc) Now, you said that the statement that he made to you was oral and you wrote it down on a piece of paper and then type it up.

A Yes, sir.

Q Now, do you have the statement that you typed up?

A Yes, sir.

Q Would you tell the jury what that statement was? You wrote that yourself?

A Yes, sir. I typed it.

[fol. 554] Q You typed it yourself?

A Yes, sir.

Q Would you take it out and read that stattment to the jury.

MR. PICCIONE: I object to him reading anything in writing, Your Honor. The proper question is what did the accused say, not what did Capt. Shirley Picard type down. It is improper for him to read what he typed out. An oral statement was what I was advised of, an oral statement is what is alleged. A statement of this man, not of that man. Let him testify to what this man said from his memory, not from his typing, not signed by this man. This is an oral statement, not a written statement. I say that's inadmissible.

MR. DeBLANC: We'll withdraw the question.

Q (By Mr. DeBlanc) What did he tell you?

A He stated that about nine or nine thirty p.m. he left his house. He met Allen Breaux on Lillian Road. They decided to go to the Country Club which is across the street from Betty's Lounge on Gilman Road. When they got in front of the Country Club on Gilman Road, they decided to go for a walk. Allen Breaux asked him if he wanted to go with him and break in a place somewheres in the park where he works. He said okay.

MR. PICCIONE: Just a moment, Captain. What are you looking at there?

THE WITNESS: Nothing, sir.

MR. PICCOINE: You're not looking at that paper?

THE WITNESS: No, sir.

MR. PICCIONE: All right, sir. Thank you very much. I saw you glance down.

THE WITNESS: Allen Breaux asked him if he [fol. 555] wanted to go in the park, break in a place in the park with him where he works in the park. He said okay.

They walked to Allen Breaux's house again and Allen Breaux got a crowbar inside of a 1956, '57 or '58 light greenish and white Oldsmobile and Allen Breaux put the

crowbar between his belt. They walked to Girard Park and once in Girard Park on a road by a lake they saw a white boy and a white girl standing on the road by a bridge.

Allen Breaux says, "Let's get the boy and the girl". Claude said okay. They walked up to the white boy and the white girl and the white boy told Allen Breaux if he wanted his money he could have it. Allen Breaux took the money and hit the white boy in the face and the white boy fell on the ground hollering that he could not see.

The white girl told him that if she would give him more money if they would leave him alone. Allen Breaux told the white girl if she wouldn't do right they would shoot both of them.. The white boy then said, "Linda, do right and they will leave us alone".

Allen Breaux jumped on the white girl, threw her on the ground, pulled her dress off and went with her. He stayed on top the white girl about forty to forty-five minutes. He was about to get on the white girl when the cops came and Allen Breaux ran in the ditch and he ran in the culvert under the bridge.

The policeman shot at him and he told him that he was coming out. He came out and broke out running and the policeman chased him and caught him three or four blocks away.

Q (By Mr. DeBlanc) Did you have occasion to talk to Rick Arleth in that case?

A Later on that morning.

[fol. 556] Q You hadn't talked to him at that time?

A No, sir.

Q Had you talked to the girl at that time?

A No, sir.

Q Did you know who she was?

A No, sir.

Q Did you know her name?

A No, sir.

Q And in that statement you referred to her by name.

A Yes, sir.

Q What name?

A Linda.

MR. DeBLANC: We tender the witness.

CROSS EXAMINATION

BY MR. PICCIONE:

Q Captain, to your knowledge had Sidney Broussard gone with the girl to the hospital?

A. Not at the time, sir.

Q Before you questioned Claude Alexander, had Sidney Broussard to your knowledge gone to the hospital with the girl?

A I don't know, sir.

Q Was Sidney Broussard there when you questioned Claude Alexander?

A Yes, sir.

Q You spoke to Sidney Broussard before you questioned Claude Alexander?

A No, sir.

Q You did not?

A No, sir.

Q Did Sidney Broussard tell you that the girl's name [fol. 557] was Linda?

A No, sir.

Q You deny that you knew the girl's name was Linda before you ever took this statement?

A Yes, sir.

Q Now, Captain, how many tape recorders does the Lafayette Police Department have?

A One.

Q If another officer reported that they have six or seven, would you know whether that's correct?

A I'd have to say one.

Q One where?

A One tape recorder which was kept in the juvenile office room.

Q In the same building where your office is?

A Yes, sir.

Q Well, now, whether there was one or more tape recorders, why didn't you use it so that we'd have the actual voices and the word for word of what you said and of what the accused said? Why didn't you do that?

A Because I feel my voice don't carry too good on a tape recorder.

Q You don't record too well?

A That's right.

Q In other words, that wouldn't be as far as these statements coming from you, would it? This is more accurate than a tape recorder would be in your opinion. Is that right, sir?

A In my opinion, yes, sir.

Q So that's why you didn't use a tape recorder. Did [fol. 558] you think of calling a stenographer and having her take down the questions from you and the answers from this man?

A No, sir.

Q You didn't think of that?

A No, sir.

Q You don't follow that procedure. That wouldn't be as fair as your taking down the statement in longhand, then tearing it up and throwing it in the wastebasket so we can't have it in our subpoena duces tecum—

MR. DeBLANC: I object to the argument, Your Honor.

MR. PICCIONE: I'm not arguing. I'm asking a question.

Q (By Mr. Piccione) You don't think that's as fair, do you? You can't produce the paper that you first wrote this statement down on, can you?

A No, sir.

Q You tore it up and threw it in the wastebasket.

A I threw it in the wastepaper basket, yes, sir.

Q So then you rehashed the statement on a piece of paper and you memorized it and you have testified today from memorization word for word what your typewritten statement says, haven't you, Captain?

A I let Alexander read it and he said that's what happened.

Q How about answering my question. Have you memorized your typewritten statement and given it to us word for word?

A Yes, sir. It's my record.

Q What you said to the jury was word for word, was

it not, according to your typewritten statement? Isn't that right?

A Yes, sir.

[fol. 559] Q Now, I've got a photostatic copy of that statement. Is it signed by Claude Alexander?

A No, sir.

Q Who is it signed by?

A Shirley Picard; Detective Captain Shirley Picard.

Q That's your signature right there?

A Yes, sir.

Q That's your statement.

A That's Alexander's statement.

Q You signed it.

A I signed it.

Q Now as a matter of fact, when you took this statement did you not refuse to permit him to call his mother?

A No, sir.

Q When you took this statement, did he not tell you that he wanted to go to jail so he could sleep?

A No, sir.

Q Because he was pooped.

A No, sir.

Q He didn't tell you that.

A No, sir.

Q Did he slump down in his chair and close his eyes?

A No, sir.

Q He didn't do that.

A No, sir.

Q Did you permit him to use the phone?

A I handed him the phone, sir.

Q And was he handcuffed at that time?

A No, sir.

Q When had the handcuffs been taken off of him?

[fol. 560] A When I arrived at the station he wasn't handcuffed.

Q Did he have his clothes on?

A Yes, sir.

Q Did he have his shoes on?

A No, sir.

Q Who else was there?

A At the time I arrived at the station?

Q At the time you questioned him.
A Officer Sidney Broussard and Anthony Navarre.
Q Did Officer Broussard have his pistol on?
A Yes, sir.
Q And he sat in the chair right to the left of Claude?
A I believe to the right of him.
Q All right, to the right of Claude. And Officer Navarre had his pistol on?
A Yes, sir.
Q And he sat to the left of Claude?
A Yes, sir.
Q And you had a little table and you sat on the other side of Claude?
A Yes, sir.
Q You had your pistol on?
A Yes, sir.
Q Was anybody else there besides the three officers and the accused?
A Not that I can recall when he was giving me the statement, no, sir.
Q Had he had the advice of counsel?
A Yes, sir.
Q Had he had the advice of an attorney?
[fol. 561] A Yes, sir.
Q Had an attorney advised him?
A No, sir; no, sir.
Q Had he talked to any member of his family?
A Not to my knowledge, no, sir.
Q He was under arrest?
A Yes, sir.
Q He was in custody?
A Yes, sir.
Q So would you say he was surrounded by his friends?
A I couldn't judge friends or enemies.
Q Now, is it not a fact that throughout your questioning of Claude Alexander he consistently and repeatedly denied that he raped anybody.
A He didn't tell me he raped anybody.
Q Now, that's not my question. My question is, did he not throughout the questioning consistently and repeatedly deny that he raped anybody?

A No, sir. He said he was about to get on top of the white girl.

Q Now, I'm going to impeach your testimony and I want to warn you right now. Did you not on the occasion of October 26, 1967, in Abbeville, Louisiana before the Honorable Charles Everett in a preliminary hearing in this matter, did I not ask you the question:

"Q Did he not consistently and repeatedly deny that he had raped anybody"?

And did you not answer:

"A In a matter of speaking, yes".

Now, did you or did you not answer yes in Abbeville [fol. 562] whereas you answered no here in Lafayette?

A I stated that he said he did not rape her, Mr. Piccione.

Q Well, did you say it like the Court Reporter says, "In a matter of speaking, yes"? Is that your answer?

A I don't recall it.

Q Well, now, are you going to admit that this is your answer or shall I call Mr. Cecil Knickerbocker, the Court Reporter?

A He did not admit raping the girl, the white girl; he did not.

Q Did you answer to my question in the words, "In a matter of speaking, yes"?

A Possibly, yes, sir.

Q Now, are you going to distinctly admit it or is there going to be a question about it? Did you distinctly say "In a matter of speaking, yes"?

A Yes, sir.

Q Now, then, look back at your statement that you typed out that you say is the statement of Claude Alexander and show me where in that statement you recorded that he consistently and repeatedly denied that he raped anybody. Now look at your statement and you tell me whether you've got that in that statement or not.

A No, sir.

Q You say that Claude did that several times yet you don't have it one time, do you, in your written statement?

A No, sir.

Q Now, you didn't think that was very important, did you?

A Sir?

Q I say, you didn't think that was very important, did you?

A Evidently not.

[fol. 563] Q Evidently not. In other words, it's pretty clear, isn't it, that this is not a complete report of what Claude Alexander said on that occasion? It isn't complete because it lacks this that he said that you admitted he said consistently and repeatedly that he did not rape anybody. Am I right?

A He did state that he did not rape anybody.

Q And you don't have that in this written record of the oral statement, do you?

A No, sir. I don't have that he raped anybody.

MR. PICCIONE: Your Honor, at this time I'm going to move now that this entire oral statement be rejected from this record and that the jury be instructed to disregard it because it is a part of a statement. It is not a statement in its entirety. Only the entirety is admissible in evidence and a part of it is not admissible in evidence, in all fairness it ought therefore be disregarded and struck from the record.

THE COURT: Has the statement been admitted into evidence?

MR. PICCIONE: Well, Your Honor, it has been read into the record and it has been heard by the jury. I don't know how else you'd say it's being admitted.

THE COURT: Is your objection directed toward the admittance of the statement or the testimony of Capt. Picard?

MR. PICCIONE: Well, Your Honor, the statement is contained within the testimony.

THE COURT: You're talking about the paper that you have in your hand?

MR. PICCIONE: No, sir, I'm talking about the—

THE COURT: You're talking about the testimony of Capt. Picard?

[fol. 564] MR. PICCIONE: I'm talking about the evidence bearing upon the statement that Capt. Picard says

he gave him orally. He has testified today about a part of the statement. The State did not bring out the part which I brought out. I had to bring it out to prove that there was more to the statement. I say now that the State has tried to bring in a part of the statement and to show, Your Honor, that it was a part I had to prove the entirety and because they didn't offer the entirety the part is inadmissible.

THE COURT: I'll overrule your objection.

MR. PICCIONE: And I will reserve a bill of exception and make a part of it the entire testimony on this matter taken out of the presence of the jury as well as in the presence of the jury, particularly the direct and the cross examination of Capt. Shirley Picard this morning, his admission. I make a part of the record also the question and the answer appearing on Page 23 of the transcript of the record which is already a part of the preliminary hearing in this matter and I make a part of it my objection, my objection that it's a part of a statement and not the entirety and that only the entirety is admissible into evidence, Your Honor's ruling denying my request that the jury be instructed to disregard the statement, and I reserve my bill of exceptions.

THE COURT: All right, let the bill be noted.

Q (By Mr. Piccione) Was there anything else, Captain, that Claude said that you failed to put in that written report?

A Not to my knowledge, sir.

Q That record that you typed up, that's a proper report of what he said?

A Yes, sir.

[fol. 565] Q That's not what you said?

A No, sir.

Q You didn't suspect that Allen Breaux was involved.

A No, sir.

Q You didn't suggest that to him.

A No, sir.

Q You didn't suggest to him that Linda said this and that.

A No, sir.

Q You didn't know the name Linda at that time.

A No, sir.

Q And this was several hours after the man was arrested.

A Yes, sir.

Q You denied that he told you to take him to jail because he wanted to get some sleep. But I ask you this question. Did you not tell him that he wouldn's get that or whatever it was until he told you what happened in the park?

A No, sir.

Q You deny that you denied something to him until he told you what happened in the park?

A Yes, sir, I deny it.

MR. PICCIONE: That's all, Your Honor.

REDIRECT EXAMINATION

BY MR. DeBLANC:

Q Before you started questioning him, did you tell him anything?

A I advised him of his rights. He had the right to remain silent, anything he said could be used against him in court, he was entitled to a lawyer, and if he didn't have one that one would be provided for him, and also that he [fol. 566] could stop talking any time he felt like it.

Q Now, was anything offered to him during the course of the conversation?

A I offered him the telephone, sir.

Q Was there any coffee brought there?

A Not to my knowledge, sir.

MR. DeBLANC: That's all.

RECROSS EXAMINATION

BY MR. PICCIONE:

Q Captain, you did tell this man, did you, that he had a right to be advised by an attorney?

A I advised him that he had a right to a lawyer.

Q And that he had a right to have an attorney present when the statement was taken?

A No, sir.
Q You didn't tell him that?
A No, sir.
Q Nor did you tell him that if he was without money and unable to hire a lawyer that one would be appointed to him by the Court.
A I advised him if he couldn't afford a lawyer one would be provided for him.
Q You say that under oath that you told him that.
A Yes, sir.
Q And he made no response.
A No, sir.
Q He didn't say anything, did he?
A No, sir.
Q And was he slumped down in his chair with his eyes closed at the time?
[fol. 567] A No, sir.
Q But he didn't answer you.
A No, sir.
Q Whether he heard you or understood you and knew what you were talking about you don't know, do you?
A No, sir.
MR. PICCIONE: Thank you.

REDIRECT EXAMINATION

BY MR. DeBLANC:

Q That statement was free and voluntary, was it not?
MR. PICCIONE: Your Honor, I object to that as a conclusion of law and I think we've been over that outside of the presence of the jury.
THE COURT: I think possibly that's correct.
MR. DeBLANC: No questions.

(Witness excused)

MR. DeBLANC: The State will call Sidney Broussard.

Thereupon,

SIDNEY JOSEPH BROUSSARD, JR.

was recalled as a witness, and having previously been duly sworn, was examined and testified further as follows:

DIRECT EXAMINATION

BY MR. DeBLANC:

Q Will you state your name, please.
A Sidney Joseph Broussard, Jr.
Q Do you know the accused in this case Claude Alexander.
A Yes, sir.
Q Did you have occasion to see him about two thirty o'clock in the morning of September the 4th, 1967, at the police station?
A Yes, I did.
[fol. 568] Q Where was that in the police station?
A In the detective room.
Q Who was there?
A At the time?
Q Yes.
A Capt. Picard.
Q Did you hear him make a statement to Capt. Picard there?
A Yes, sir.
Q What was that statement? What did it say?
MR. PICCIONE: Your Honor, same objection on any oral statement of the accused since it's another witness.
THE COURT: I'll overrule the objection.
MR. PICCIONE: And I reserve my bill in the same phraseology as before.
THE COURT: All right, let it be noted as such.
MR. DeBLANC: I'll rephrase that question.
Q (By Mr. DeBlanc) Before he made that statement, did Capt. Picard tell him anything?
A He advised him of his rights, yes, sir.
Q What was that statement?

A I have the statement with me. Can I read it or—
Q Well, tell us what you heard.
A Well, his statement was that he left his house around nine, nine thirty that night and that he had met subject by the name of Allen Breaux on Lillian Road, that they walked to the Country Club and when they got to—

MR. PICCIONE: If Your Honor please, pardon the interruption, but I've got to interrupt at this time. I'd like to have an opportunity, Your Honor, to question this witness, possibly out of the presence of the jury, as Your [fol. 569] Honor may rule, on when he learned this because he's obviously got a piece of paper in his hand.

THE COURT: Let's retire the jury.

(At this time the jury retired from the courtroom and counsel for the respective parties argued to the Court, after which the jury returned to the courtroom.)

THE COURT: Do you waive the polling of the jury?
MR. DeBLANC: Yes, Your Honor.
MR. PICCIONE: Yes, Your Honor.
THE COURT: You may proceed.

EXAMINATION (CONT'D.)

BY MR. DeBLANC:

Q What did you hear this man here tell Capt. Picard that early morning at two thirty in the morning on September the 4th at the police station?
A You want me to start at the beginning?
Q Yes.
A He stated that at about nine, nine thirty that night he left his house and he met a subject by the name of Allen Breaux on Lillian Road, that they walked to the Country Club. While they were there at the Country Club Allen Breaux asked him if he wanted to go break into a place where he worked at and Alexander said okay.

So they walked back—he said they walked back to Allen Breaux's house and got a crowbar out of Allen Breaux's '57 or '58 greenish white Oldsmobile and that

Allen Breaux took the crowbar and placed it between his belt and that they walked to Girard Park.

When they got in the park they met a white boy and a white girl on the road by the lake. Allen Breaux asked [fol. 570] Claude Alexander if he wanted to get the boy and the girl, the white boy and the white girl. Claude Alexander said okay. They walked up to them and Allen Breaux asked him for his money and the boy gave him the money and he hit that boy. The girl said, "If I give you all more money will you all leave us alone"? Allen Breaux jumped on the white girl, knocked her down, pulled her dress off, got on top of her and went with her.

Claude Alexander stated that Allen Breaux stayed on the white girl for at least forty to forty-five minutes and that as he was about to, Claude Alaxender was about to get on the white girl the cops came. Allen Breaux ran down the ditch and that he got into a concrete culvert and the policeman said come out and he did and that's when he started running and caught him about two or three blocks away.

MR. DeBLANC: We tender the witness.

CROSS EXAMINATION

BY MR. PICCIONE:

Q Mr. Broussard, have you got a copy there in your possession of Capt. Picard's statement?

A Yes, sir.

Q May I see it?

A Yes, sir.

Q All right. Now, how long have you had this particular copy?

A The night he gave the statement.

Q Since the night that who gave the statement?

A Claude Alexander gave the statement.

Q What date was that?

A On September the 4th, '67.

Q And you've had that statement in your pocket all [fol. 571] that time?

A I had it at the house.

Q How many times have you looked at it?
A I looked at it when the trial was set the first time. I had it in my possession and also since Monday.
Q You read it over carefully?
A Yes, sir.
Q You studied it?
A I refreshed my memory on it.
Q Did you study it again after that?
A Yes, I did.
Q And you studied it again yesterday?
A I read it yesterday.
Q You knew you were going to be called on the stand so you studied it very carefully. Is that right?
A Yes, sir.
Q So therefore your testimony today is your study and your memory of what is written by Capt. Picard on this piece of paper. Isn't that right, sir?
A No, sir. I was present at the time the statement was given.
Q Well, you were present when Claude Alexander made certain statements. Is that right, sir?
A Correct.
Q Is this statement signed by Claude Alexander?
A No, sir.
Q But you have testified from this piece of paper, haven't you, a copy of it?
A I refreshed my memory from that piece.
Q In other words, you kept your memory fresh by [fol. 572] looking at this time and time again in these last several months. Is that correct?
A Yes, sir.
Q That's clear, isn't it?
A Yes, sir.
Q Now, then, let's see how good your memory is on what was said when the statement was taken. Did Claude Alexander several times state in effect "I did not rape anybody"?
A No, sir, he didn't state that.
Q He never said that once?
A Not when I was present, no, sir.
Q He didn't say that repeatedly and consistently?

A No, sir, not that I remember.
Q More than once?
A If he did I didn't hear it.
Q In other words, if he said anything that's not stated in this typewritten report of the statement, you don't know about it. Is that right?
A No, sir.
Q And you don't even remember it. Is that right?
A Not if anything else was said, no.
Q So that if Capt. Shirley Picard testified that he did consistently and repeatedly deny that he raped anybody, then you would say that Capt. Picard was mistaken and that you're correct?
A I didn't hear that at all.
Q You mean he could have said that several times and you didn't hear it?
A It's possible that I didn't hear him.
Q You weren't concerned as to whether or not what Capt. Picard typed down was a complete statement or an [fol. 573] incomplete statement?
A Capt. Picard is the one that took the statement down, sir, and I was just there present listening to it.
Q In other words, Capt Picard is responsible for the statement. Is that right?
A He was the investigating officer in command.
Q You don't resume any responsibility toward the result of what was typed down.
A I was present.
Q You were just present.
A Right.
Q Mr. Broussard, were you in the police unit that took Miss Linda Dossey to the hospital?
A Yes, sir.
Q You helped get her up into the hospital?
A Yes, we brought her to the hospital.
Q You talked with her a little bit?
A No, sir, I didn't talk to her.
Q You tried to help her?
A Yes, sir.
Q Who else was there when you took her to the hospital?

A Auxiliaryman John Broussard and Carl Arleth.

Q The young man who was with her was also there?

A Correct.

Q And you were able to talk with him, right?

A Correct.

Q And he told you that his date's name was Linda Dossey?

A Correct.

Q So you knew at that time that her name was Linda Dossey.

A Correct.

[fol. 574] Q When you got back to the station you told Capt. Picard what you had learned, that Linda Dossey and Carl Arleth were the names of the people involved?

A No, sir. You mean right when I got there?

Q I don't mean right when you got there. I mean any time after you got there? Did you not tell Capt. Picard that?

A Yes, sir, I did.

Q You did tell him that, didn't you?

A Yes, sir.

Q And that was before he took the statement of Claude Alexander that you said you witnessed.

A No, sir.

Q No, sir, what?

A It was after we took the statement.

Q You remember that?

A Yes, sir.

Q You remember that or have you had a discussion outside of this courtroom that it's a necessary thing to establish that Linda came from him rather than from Capt. Picard?

A No, sir.

Q You haven't discussed that?

A No, sir, we haven't.

Q You haven't discussed that with Capt. Picard?

A No, sir.

Q Have you discussed it with anybody else?

A No, sir.

Q That's the truth?

A That is.

Q Now think back very carefully. Did you report to Capt. Picard when you got back from Our Lady of Lourdes [fol. 575] Hospital of what you had found out? Did you report to him?

A After we come out, after we come out of the detective room, yes, sir.

Q Didn't you report to him what you had found out before the interrogation proceeded?

A No, sir, I hadn't.

Q In other words, you didn't even assist the investigating officer by telling him what you had learned at the hospital and on the scene. You let him go ahead with the interrogation without telling him what you had found out. Is that correct?

A Correct.

Q Is that the procedure you follow?

A When I arrived at the station, Capt. Picard was entering the detective division, detective room, and I followed him inside.

Q And you didn't talk with Capt. Picard?

A No, sir.

Q You just listened.

A Correct.

Q Was it not Capt. Picard that asked Claude Alexander, "Weren't you with Allen Breaux tonight"? Didn't he say, "Weren't you with Allen Breaux in the woods tonight", or words to that effect?

A No, sir.

Q Was it not Capt. Picard who said to him, "Didn't Linda offer you her money"?

A No, sir, I didn't hear that.

Q It could have happened that way.

A Pardon?

Q It could have happened that way and you just don't [fol. 576] remember it?

A I don't recall it.

Q You don't know.

A No, sir.

Q You don't know who supplied the name Linda. Is that right?

A Supplied the name Linda?

Q Yes. Do you know whether you supplied it? You knew the name, didn't you?
A Correct. I had it in my notebook.
Q You had it in your notebook.
A Correct.
Q Did you supply the name?
A No, sir, I didn't supply the name.
Q Well, did Capt. Picard supply it?
A No, sir.
Q Did anybody supply it?
A In the statement I understood the white boy—in the statement Claude Alexander gave, after the boy, the white boy was hit, he stated "Linda, do right and they'll leave us alone".
Q And you're telling me then that this man here would have heard that one time in the park in an activity of this type and he remembered that name and furnished that name in this interrogation?
MR. DeBLANC: We object to that as calling for an opinion as to what Mr. Arleth might have thought.
THE COURT: I'll sustain the objection.
Q (By Mr. Piccione) That's your memory.
A Correct.
MR. PICCIONE: That's all, Your Honor.
[fol. 577] MR. DeBLANC: That's all.

(Witness excused)

MR. DeBLANC: Officer Navarre.
Thereupon,

ANTHONY NAVARRE

was recalled as a witness, and having been previously duly sworn, was examined and testified further as follows:

DIRECT EXAMINATION

BY MR. DeBLANC:

Q Will you state your name, please.
A Anthony Navarre.
Q And your occupation?

A City Police.
Q In the City of Lafayette?
A Correct.
Q Do you know Claude Alexander?
A I do.
Q Do you see him in the courtroom?
A I do.
Q Will you point him out to the jury.
A He's sitting to the right of Mr. Piccione.
Q Did you have occasion to see him on September the 4th at the City Police Station?
A I did.
Q About what time was that?
A I cannot determine on the time, but it was after one thirty in the morning.
Q Now, where was it you saw him there?
A In the detective office.
Q Who else was there?
[fol. 578] Q Capt. Picard and Officer Broussard.
Q Which Broussard?
A Sidney Broussard.
Q Did you have occasion to hear him make a statement to Capt. Picard there at that time?
A As he began to make his statement I departed from the office. I was called out to go on an errand, on a mission.
Q You walked out before he made the statement?
A Correct.
Q Had he started to make the statement at that time?
A Negative. As I walked out—right after he refused to use the phone I walked out.
Q Right after he refused to sign?
A Right after he refused to use the phone, and I came back later on.
Q Well, did you see what Capt. Picard did during the time that you were there?
A Well, when I returned back, yes, I did.
Q What did he do?
A When I returned back Alexander was talking and Capt. Picard was writing. In other words, he was writing his statement.

Q How was he writing it?
A He had a sheet of paper and a pencil.
Q Did you see what he did afterwards with the sheet of paper?
A He later typed it and gave the statement to Alexander to sign, asked him if he wanted to sign.
Q Did he sign it?
A He picked it up, picked up the pen and made a motion to sign and then he threw the pen on the desk and [fol. 579] said that he wouldn't sign anything or he wouldn't say anything more unless he was given his shoes.
Q Did you hear Capt. Picard tell him anything before he gave him the statement?
A I did.
Q What was it he told him?
A Capt. Picard advised him of his rights.
MR. DeBLANC: We tender the witness.

CROSS EXAMINATION

BY MR. PICCIONE:

Q Just this, Mr. Navarre. Do you recall Claude Alexander asking to call his mother or for someone to call his mother?
A I don't recall that.
Q Nobody saw fit to call his family at that time?
A I did not.
Q You all did call the family of the young boy and the young girl, didn't you?
A I did not call.
Q Somebody called them.
A Correct.
Q They came there that night.
A I saw the girl's father that night, but I don't know who called him.
Q Did you see Claude Alexander's mother?
A I did not.
Q Or any of his relatives?
A I did not.
Q To your knowledge, nobody called them, did they?

A To my knowledge no one called.

Q Did you hear Claude say, "Take me to jail, I'm [fol. 580] pooped, I want to sleep, let me sleep", before this statement was taken?

A Not before the statement was taken.

Q When was it?

A He made this statement as I and Officer Broussard —Auxiliaryman Broussard was taking him to jail. It was just as we departed from the station.

Q But you do remember him making that statement now. Is that right?

A Correct.

Q Who else was there when he made that statement? Was Sidney Broussard there?

A I honestly cannot recall; however, Auxiliaryman Broussard was there.

Q Was Capt. Shirley Picard there?

A I cannot recall that, sir.

Q You don't remember if they were there and heard that statement?

A No, I cannot.

Q Do you remember Capt. Picard telling Claude Alexander that he would not let him have some rest, sleep, until he told him what happened in the park? Now, think about that.

A He made no such statement to my knowledge.

Q You don't remember that?

A He made no such statement in my presence.

MR. PICCIONE: That's all, Your Honor.

MR. DeBLANC: That's all.

* * * *

Monday Mar 30 1970

SUPREME COURT OF LOUISIANA

Nos. 50,012 and 50,013

STATE OF LOUISIANA

v.

CLAUDE ALEXANDER

Appeal from the Fifteenth Judicial District Court
Criminal Division, Parish of Lafayette

HONORABLE JEROME E. DOMENGEAUX, JUDGE

McCALEB, Justice.

Claude Alexander and Lee Perry Pratt were originally indicted by the grand jury for the Parish of Lafayette for having committed the crime of aggravated rape on September 4, 1967. However, following a hearing and disposal of certain motions and pleas prior to trial, the judge granted a severance at the behest of Pratt and, thereafter, the District Attorney pursuant to Article 705 C.Cr.P. filed separate indictments against each defendant. Alexander entered a plea of not guilty. After the trial, the jury returned a verdict of guilty without capital punishment and he was sentenced to life imprisonment. He has appealed, relying upon the following bills of exceptions,[1] for a reversal of his conviction. Some of these bills are common to those reserved by Lee Perry Pratt,

[1] Appellant, who has employed new counsel since his conviction, reserved numerous other bills of exceptions numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17 and 41 during his trial. These bills were perfected but, since they have not been mentioned either in oral argument or in brief in this Court, we presume they have been abandoned. Nevertheless, we have examined these bills and find they either refer to matters which are now moot or that they are without merit.

who has also appealed and whose conviction has this day been affirmed. See State v. Pratt, —— La. ——, —— So.2d ——, No. 50,014 of our docket.

The record reveals the following facts: About midnight on September 3, 1967, a sixteen year old girl accompanied by her date, Carl Arleth, Jr., an eighteen year old young man, after visiting various places of amusement in Lafayette, Louisiana, went to Girard Park where they decided to stop for a few minutes. While walking in the vicinity of the park lake, they were accosted by two young Negroes, Claude Alexander and Lee Perry Pratt.

These two men informed the couple that they had a gun and grabbed Arleth, robbing him of $4.00. One of the men then assaulted the young girl who began screaming and fighting him off. At that time the other man struck Arleth, knocking him down and, as he lay on the ground, Alexander and his companion assaulted the girl, telling her that she had better do what they wanted or they would shoot both her and her boyfriend. The two men tried to tear off her clothes, and succeeded in pulling off her girdle and underwear. Then Alexander had sexual intercourse with the girl while his companion helped to hold her down and quiet her. Following this, the companion had sexual intercourse with the girl while Alexander held her down. This procedure was again alternated. At that point, the girl had only her bra and dress on, but Alexander pulled off the dress and grabbed her by the wrists, dragged her on her bare skin across the blacktopped street for a distance of 185 feet and dumped her into the coulee which was eleven feet deep. About this time she blacked out and Alexander then went down into the coulee and again began having sexual intercourse with her. They were lying in the coulee at the entrance to a large concrete culvert across the road and, while Alexander was having sexual relations with her, the City Police came upon the scene. Two officers, Sidney Broussard and Patrolman John Broussard, were in the patrol car when Sidney Broussard noticed someone running in the coulee. He stopped the car, got out and spotted his light within the coulee where he saw Alexander lying in a prone position on top of the girl. Upon being discovered,

Alexander got up, zipped the fly of his trousers and entered the North end of the culvert right next to where he had been lying. The other officer then ran to the other end of the culvert. At this time Officer Sidney Broussard loudly called on Alexander to come up. Upon the latter's failure to do so, the officer fired a shot on the side of the culvert into the ground. Then Alexander came out on the North end of the culvert and was placed under arrest by the officers who had him lie on the ground face down. At this time the girl was screaming and began climbing the banks of the coulee, and Sidney Broussard went to her assistance. When he did so, Alexander got up and fled. The officers followed him in close pursuit and finally apprehended him.

The first bill presented by defense counsel for our consideration is designated in the record as Bill of Exceptions No. 10 and was taken to the overruling of Alexander's motion to quash the indictment. This bill is similar to Bill of Exceptions No. 2 in State v. Pratt, supra, and, for the reasons hereinafter stated and those given in the Pratt case, we find the complaint to be without merit.

The grounds advanced for quashing the indictment are:

"* * *

"(1) That citizens who are females were systematically excluded from the Grand Jury list and venire and from the Grand Jury as empaneled.

"(2) That citizens of the Negro race were included in the Grand Jury list, and Grand Jury venire, in such small numbers as to constitute only a token, having no relationship to the number of citizens of the Negro race as compared to the number of citizens of the Caucasian race in the general population in the Parish of Lafayette and in the Fifteenth Judicial District of the State of Louisiana.

"(3) That the indictment found by the Grand Jury is defective for failing to inform the accused, Claude Alexander, of the facts and circumstances necessary to constitute the alleged crime of aggravated rape.

"(4) That the indictment * * * is invalid and illegal and should be quashed because said indictment

was returned by a Grand Jury empaneled from a Grand Jury venire made up contrary to the provisions of Amendment V, Amendment VI, Amendment XIV and Amendment XV of the Constitution of the United States of America."

It is obvious, from a mere reading of the grounds above set forth, that the objection stated in paragraphs one and three are clearly without substance. It is well settled that the fact that women do not appear on a general venire list for jury duty furnishes no cause for quashing an indictment in view of Article 402 of the Code of Criminal Procedure. See also State v. Comeaux, 252 La. 481, 211 So.2d 620; Hoyt v. State of Florida, 368 U.S. 57, 82 S.Ct. 159, 7 L.Ed.2d 118 (1961); and State v. Lee Perry Pratt, supra, this day decided. And the claim in paragraph three that the indictment is defective in that it fails to inform defendant of the nature and cause of the accusation against him is likewise not well founded. The accused is charged under the short form provided in Article 564 C.Cr.P., and this form has many times been held sufficient to satisfy constitutional requirements. State v. Barksdale, 247 La. 198, 170 So.2d 374, and cases there cited.

The main contention under the motion to quash is that Negroes were included in the grand jury list and general venire in such small numbers as to constitute only token representation and, thus, warrants the conclusion that they were systematically excluded by design because of their race from grand jury service.

The question of purposeful inclusion or exclusion of members of a race from jury service is manifestly one of fact, and the burden rested with defendant to establish his claim. See State v. Mack, 243 La. 369, 144 So.2d 363, and cases there cited. In assuming this burden, defendant called to the stand the registrar of voters and the clerk of court, who is also a member of the jury commission.

The testimony of these witnesses, particularly that of the clerk of court, as we have found in State v. Pratt, this day decided, does not support counsel's contention for, after reviewing the evidence in the case, we declare:

"The fact that the Grand Jury included no members of the Negro race is, in our opinion, a matter of coincidence and not purposeful exclusion. As stated supra, the composition of the general venire was indiscriminate; the names of the Grand Jury venire were drawn from the general venire. It follows that race was not a factor in selection. See Article 411, Louisiana Code of Criminal Procedure."

In view of the finding in the Pratt case, it would be superfluous to discuss in detail the evidence upon which our conclusion rests. Suffice it to say that the evidence shows that the general venire list of 400 names contained the names of 25 Negroes, a circumstance which lends support to the testimony of the clerk of court that the venire list was chosen from the card index without reference to race. Furthermore, the fact that the 20 names drawn by lot from the general venire to comprise the grand jury venire for the court term, during which defendant was indicted, contained the name of only one Negro cannot be regarded as an indication that Negroes were systematically excluded from grand jury service in the absence of a showing that over the years a pattern has been established whereby only a token number of Negroes has been selected to serve on grand juries in Lafayette Parish. For, without some evidence of this sort, there is no sound basis for rejecting the testimony of the clerk of court (who, incidentally, was the only member of the jury commission consisting of five persons called by defendant to testify), that the general venire of 400 names was selected without consideration of race, color or creed.

Bills of Exceptions Nos. 18, 19, 20, 21, 22 and 23 are interrelated and treated as one in the briefs of defendant and the State. Bills Nos. 18, 19 and 20 were taken when the court ruled, over defense counsel's objection, that the State could exhibit to Officer Sidney Joseph Broussard, Jr. certain photographs of the victim and her escort, Carl Arleth, showing cuts, scratches and abrasions on their bodies on the day after the rape. Also, the officer was permitted to identify a photograph of the defendant. And

Bills 21, 22 and 23 were reserved when the judge permitted these photographs to be shown Auxiliary Patrolman John Broussard for his identification of the defendant, the victim and her escort.

Defense counsel contends that these photographs were used by these witnesses in their testimony before the jury without a proper foundation being first laid for their admissibility since there was nothing to indicate at the time the Broussards testified as to when, where or by whom the photographs were made or their materiality and relevance to the State's case.

We find no merit in the bills. While it is true that the foundation for the admission of the photographs had not been laid at the time the objections were made and the identification of the persons therein pictured were given by the officers, the fact remains that the State was not attempting to offer the photographs in evidence at the time the police witnesses identified the persons pictured therein. Later on during the trial, after the proper foundation had been laid, the photographs were admitted in evidence without objection.

Article 773 of the Code of Criminal Procedure provides that neither the State nor the defendant can be controlled by the court as to the order in which evidence shall be adduced. However, when evidence requires a foundation for its admission, the foundation must be laid before the evidence may be received. Since the State was not attempting to offer the photographs in evidence, the objection that the foundation for their admission must first be laid was premature and out of context with the announced purpose of their use. But, if the use of the photographs at that time was objectionable, we would still find no substance in counsel's contention inasmuch as the photographs were properly admitted at a later time when the foundation was laid for their reception in evidence.

Bill of Exceptions No. 24 was taken when the court overruled an objection by defense counsel to a statement made by Carl Arleth, the girl's escort who, in testifying for the State, declared that when the police arrived he told them "* * * that Linda had been raped * * *." De-

fense counsel conceives that this was opinion testimony and, therefore, inadmissible.

The objection was properly overruled. Arleth was not testifying to an opinion; he was stating a fact, as he had witnessed the rape.

Bill of Exceptions No. 25 was reserved to the trial judge's ruling permitting the in-court identification of the accused by the State witness, Carl Arleth, Jr., who was present at the time of the commission of the crime. The objection was based on the contention that the proper foundation for the identification had not been laid.

In this Court, however, defendant's new counsel presents an entirely different theory proclaiming that, in view of the fact the accused was a Negro being tried by an all white jury, "* * * such an obvious identification was immaterial and irrelevant * * * and could have no other effect than to convey to the jury the witnesses' belief that the defendant because he was a Negro was the guilty party * * *."

There is no merit in the bill. Arleth was an eyewitness to the crime, and his testimony shows that he was qualified to make an in-court identification. See State v. Singleton, 253 La. 18, 215 So.2d 838, a case substantially similar to this one, and the authorities there cited.

Bill of Exceptions No. 26 was reserved to the court's refusal to admonish the jury to disregard the pronunciation of the word "Negroes" by the Assistant District Attorney, Mrs. Frances Gilfoil. It appears from the record that Mrs. Gilfoil pronounced the word Negroes with less emphasis on the letter "o" than commonly used so that the word as she pronounced it sounded somewhat like "nigras." The judge thought the objection to the pronunciation by Mrs. Gilfoil was frivolous. But counsel in argument here stresses that the pronunciation of the district attorney somehow prejudices defendant before an all white jury.

We agree with the trial judge. Indeed, it is difficult to discern that defendant suffered any prejudice as the result of the assistant district attorney's pronunciation of the word Negroes. On the contrary, it appears to us that, in view of the heinous crime committed by defendant,

which was proved beyond a reasonable doubt to the satisfaction of the jury, the members of that body displayed leniency and compassion by returning a qualified verdict of guilty in the case.

Albeit Bills of Exceptions Nos. 27, 28, 29, 30, 31, 32, 33, 34, 35 and 36 have been argued and submitted by both the State and defense counsel as inseparable, in that they refer to the admission in evidence on rebuttal by the State of a certain inculpatory or exculpatory statement given by defendant, we think that discussion of these bills would be more readily understood if they were partially segregated.

It appears from the record that defendant took the witness stand in his own behalf and testified that he had gone to the park on the night of the crime with the intention of burglarizing the Yarc Club and had obtained a tire tool from the trunk of his car to assist him in doing so; that, while in the park, he heard a noise and as he crossed the bridge he heard a moan; that he walked down into the culvert and found the prosecutrix lying there; and that, soon afterwards, the police officers arrived and arrested him. At this stage of defendant's testimony, the State informed the court that it desired to introduce an oral inculpatory statement made by the defendant for the purpose of rebutting his evidence.

Accordingly, the jury was then withdrawn from the courtroom and, thereafter, the State produced Officers Shirley Picard, Sidney Broussard and Anthony Navarre to lay the foundation for the admission in evidence of an oral statement of an inculpatory or exculpatory nature which tended to contradict the testimony given by defendant while on the witness stand. During the examination of these witnesses out of the presence of the jury, defense counsel reserved Bills of Exceptions Nos. 27, 28 and 29, which were taken when the judge overruled objections to questions propounded by the district attorney to Picard on the ground that they were leading questions. The first question asked was whether Picard or anyone else in his presence did anything to menace or intimidate the defendant or threaten him in any manner so as to cause him to give the statement sought to be intro-

duced in evidence. The court overruled the objection that the question was leading and similar objections to two other questions of the same nature. Whereupon, defense counsel reserved Bills 27, 28 and 29.

We find no substance in the bills. When the State attempts to lay the foundation for the admission of a confession, it is required to show that the statement given by the accused is free and voluntary in all respects. Hence, it must perforce propound to the State witnesses questions to establish this as a fact. While the questions propounded may be regarded as leading in a sense, their allowance is within the sound discretion of the judge, and we cannot think of any instance where bills of this sort furnish a valid basis for the reversal of a conviction.

Bill of Exceptions No. 30 was taken to the overruling by the judge of defense counsel's objection to the reception of defendant's oral statement in evidence on the ground that the offer of the statement came too late after the State had rested its case in chief.

We find no merit in the bill. Since the State had notified the defendant it had an inculpatory statement and intended to use it, it had the right to offer it at any stage of the trial upon laying the foundation for its admission.

Bills 31, 32 and 33 were taken to the overruling of objections to questions propounded to Officer Broussard on the ground that they were leading. In this respect, as we have indicated, the bills are on a parity with Bills 27, 28 and 29 hereinabove discussed. One of these bills shows that, when Officer Broussard was asked whether he or anyone else placed defendant in fear or under duress, the objection was made to his testimony on the ground that it would contain conclusions and, when the officer was asked did anyone else threaten defendant in any way to make him give a statement, the same objection was made.

These bills, we think, are obviously without merit.

The same ruling applies to Bills of Exceptions Nos. 34 and 35, which were taken to the overruling of objections to similar questions propounded to Officer Navarre on the ground that they were leading.

Bill No. 36 was taken when the judge ruled that the State had proven to his satisfaction that all the warnings required by Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694, were given the defendant, and that the oral inculpatory statement made by him was free and voluntary. The judge states in part in his per curiam:

> "The Court wishes also to state that it was completely satisfied with the testimony of the three officers, Picard, Broussard and Navarre, in connection with the circumstances surrounding the taking of the statement of the defendant. The Court was satisfied that these officers testified truthfully."

After reading the testimony, we find no error in the judge's rulings and, hence, this bill is not well founded.

When defendant was on the stand under cross-examination, he was asked, with respect to his statement to the police, whether he saw the officer type anything on the typewriter. His answer was, "Yes." At this point defense counsel objected, stating:

> "* * * I would like to make it clear that it is clear that I have before the court objected to what we are now getting into to the questioning under the condition and the statements that we're now getting into on constitutional grounds, and we're reserved our bill of exceptions on any of this as being legally admissible in this trial."

When the judge overruled the objection, counsel reserved Bill No. 37.

We find it difficult to comprehend the meaning of counsel's objection. However, the court evidently understood it, for it was stated in the per curiam that the bill was merely a reiteration of defendant's previous objection to the court's allowance of evidence on defendant's inculpatory statement. We perceive no error in the ruling.

After the judge found the confession admissible, the jury was returned to the courtroom and defendant resumed his testimony on the stand under cross-examination. At this time he was asked concerning the giving of the statement and, when he denied that he had voluntar-

ily made a statement, the State announced its intention to impeach his testimony. Thereafter, Officers Picard and Broussard were placed on the stand, and they testified that defendant did make the oral statement in question. Defense counsel objected to Officer Picard's testimony concerning the statement "* * * for the constitutional reasons I have heretofore urged." When the objection was overruled, Bill No. 38 was reserved. Later on, during the cross-examination of Officer Picard, defense counsel objected to the officer's testimony anent the oral statement of defendant on the ground that the entire statement had not been related by the witness, and, when the objection was overruled, Bill No. 39 was reserved.

In his per curiam to these bills, the judge remarks that they are simply a reiteration of counsel's objection to defendant's inculpatory statement and Officer Picard's testimony in connection therewith. After an examination of the testimony pertaining to these bills, we find no error in the ruling of the trial judge.

Bill of Exceptions No. 40 is on the same footing as Bills 38 and 39. It was taken while Officer Broussard was on the stand, and counsel objected to the officer's statement concerning the giving of the oral inculpatory statement. The bill is without merit.

For the reasons assigned, the conviction and sentence are affirmed.

SUPREME COURT OF THE STATE OF LOUISIANA

Clerk's Office, New Orleans, May 4, 1970

Dear Sir:

Rehearing was this day refused in the case entitled State v. Alexander et al Nos. 50,012, 50,013.

Cordially yours,

HAROLD A. MOISE, JR., Clerk.

SUPREME COURT OF THE UNITED STATES

No. 5944, October Term, 1970

CLAUDE ALEXANDER, PETITIONER

v.

LOUISIANA

On petition for Writ of Certiorari to the Supreme Court of the State of Louisiana.

On consideration of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted.

March 1, 1971

☆ U. S. GOVERNMENT PRINTING OFFICE: 1971 423-264 [illegible]

LIBRARY
SUPREME COURT, U. S.

Supreme Court, U.S.
FILED
JUN 9 1971
E. ROBERT SEAVER, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

70-5026

No. ~~5944~~

CLAUDE ALEXANDER,

Petitioner,

v.

STATE OF LOUISIANA.

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF THE STATE OF LOUISIANA

BRIEF FOR PETITIONER

JACK GREENBERG
JAMES M. NABRIT, III
CHARLES STEPHEN RALSTON
MARGRETT FORD
10 Columbus Circle
New York, New York 10019
CHARLES FINLEY
P.O. Box 3463
Lafayette, Louisiana 70501
Attorneys for Petitioner

Washington, D. C. · THIEL PRESS · 202 · 393-0625

INDEX

	Page
Opinion Below	1
Jurisdiction	2
Constitutional Provisions and Statutes Involved	3
Questions Presented	4
Statement of the Case	5
Summary of Argument	12
Argument:	
I. PETITIONER WAS DENIED EQUAL PROTECTION OF THE LAW IN THAT NEGROES WERE SYSTEMATICALLY EXCLUDED FROM THE GRAND JURY THAT INDICTED HIM	13
A. Petitioner Made Out a Prima Facie Showing of Racial Discrimination in the Selection of the Grand Jury that Indicted Him	14
B. The Evidence Established that There Was an "Opportunity for Discrimination" in Violation of *Whitus v. Georgia* and *Avery v. Georgia*	19
II. THE TOTAL EXCLUSION OF WOMEN FROM JURIES IN LAFAYETTE PARISH DEPRIVED THE PETITIONER OF A JURY REPRESENTING A CROSS-SECTION OF THE COMMUNITY IN VIOLATION OF THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT	22
A. This Case, Unlike *Hoyt*, Involves the Total Exclusion of Women from Juries	23
B. The Total Exclusion of Women Violates the Requirement of Representative Juries Imposed by the Due Process Clause	25
III. THE INTRODUCTION OF PETITIONER'S ALLEGED CONFESSION VIOLATED HIS RIGHTS TO DUE PROCESS OF LAW	30
CONCLUSION	34

Page

APPENDIX

1. Statutes of Louisiana Relating to Jury Selection 1a

2. Portion of Decision of Supreme Court of Louisiana in *State of Louisiana v. Pratt,* 255 La. 919, 233 So.2d 883 (1970), Dealing with Jury Selection 9a

CASES

Anderson v. Georgia, 390 U.S. 206 (1968) 20

Avery v. Georgia, 345 U.S. 559 (1953) 19, 20, 21

Ballard v. United States, 329 U.S. 187 (1946) 25, 26

Bostick v. South Carolina, 386 U.S. 479 (1968) 20

Carter v. Jury Commission of Greene County, 396 U.S. 320 (1970) 15, 25, 26

Chapman v. California, 386 U.S. 18 (1967) 31, 33

Eubanks v. Louisiana, 356 U.S. 584 (1958) 13

Glasser v. United States, 315 U.S. 60 (1941) 25

Harris v. New York, 401 U.S.___, 28 L.Ed.2d 1 (1971) 13, 31

Hill v. Texas, 316 U.S. 400 (1942) 22

Hoyt v. Florida, 368 U.S. 57 (1961) . . . . . *passim*

Jones v. Georgia, 389 U.S. 24 (1967) 15, 20

Labat v. Bennett, 365 F.2d 698 (5th Cir. 1966) 25

Miranda v. Arizona, 384 U.S. 436 (1966) . . . . . *passim*

Norris v. Alabama, 294 U.S. 587 (1935) 15

Patton v. Mississippi, 332 U.S. 463 (1947) 15

Phillips v. Martin Marietta Corp., 400 U.S. 542 (1971) 29

Shapiro v. Thompson, 394 U.S. 618 (1969) 28

Sims v. Georgia, 389 U.S. 404 (1967) 15, 20

Smith v. Texas, 311 U.S. 128 (1940) 25

State of Louisiana v. Pratt, 255 La. 919, 233 So.2d 883 (1970) 1, 4, 11

Thiel v. Southern Pacific Co., 328 U.S. 217 (1946) 25

Turner v. Fouche, 396 U.S. 346 (1970) 14, 15, 16

Page

Walder v. United States, 347 U.S. 62 (1954) 31, 33

White v. Crook, 251 F.Supp. 401 (M.D. Ala. 1966) 27, 29

Whitus v. Georgia, 385 U.S. 545 (1967) ..... *passim*

STATUTES

Ala. Code 1940, Tit. 30, § 21 27

Fla. Stat. Ann. § 40.01 (1) 23, 28

Idaho Code § 2-411 28

Louisiana Code of Criminal Procedure § 402 ..... 2, 6, 22, 23

Louisiana Code of Criminal Procedure § 408 ..... 2, 5

Minnesota Stat. Ann. § 593.02 28

Mississippi Code 1942 Ann. § 1762 27

New Hampshire Rev. Stat. Ann. 1955, § 500:1 28

North Dakota Cent. Code § 27-09-04 28

South Carolina Code 1962, § 38-52 27

Virginia Code § 8-178(30) 28

Washington Rev. Code § 2.36.080 28

OTHER AUTHORITIES

Finklestein, *The Application of Statistical Decision Theory to the Jury Discrimination Cases*, 80 Harv. L. Rev. 338 (1966) 16, 17

Moroney, *Facts from Figures* (3rd and Revised Edition, Baltimore, Md., 1965, Penguin Books - Pelican) 17

National Bureau of Standards Handbook of Mathematical Functions (National Bureau of Standards, Applied Mathematics Series, No. 55, June 1964) U.S. Govt. Printing Office 18

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 5944

CLAUDE ALEXANDER,

Petitioner,

v.

STATE OF LOUISIANA.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

BRIEF FOR PETITIONER

OPINION BELOW

The opinion of the Supreme Court of Louisiana is reported at 255 La. 941, 233 So.2d 891, and is set out in the Appendix (A. 170-180).[1]

---

[1] In a companion case, *State of Louisiana v. Pratt*, 255 La. 919, 233 So.2d 883 (1970), the Supreme Court of Louisiana decided issues relating to jury discrimination common to both cases. The relevant parts of the *Pratt* decision have been set out in the Appendix to this Brief (B. A. 9a-15a).

JURISDICTION

Judgment of the Supreme Court of Louisiana was entered on March 30, 1970 and a motion for rehearing was denied May 4, 1970 (A. 181). An extension of time for filing a petition for writ of certiorari was granted by Mr. Justice Black to and including September 29, 1970. The petition for writ of certiorari and a motion for leave to proceed in forma pauperis were filed on September 29, 1970, and were granted on March 1, 1971 (A. 181).

Jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257(3), petitioner having asserted below and asserting here the deprivation of rights, privileges and immunities secured by the Constitution of the United States.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States.

This case also involves sections 401-404, 408, 410-411, 413-417, and 419 of the Louisiana Code of Criminal Procedure, the texts of which are set out in the Appendix to this brief (B.A. 1a-9a).

QUESTIONS PRESENTED

1. Was petitioner, who is a Negro, denied due process and equal protection of the laws as guaranteed by the Fourteenth Amendment by being indicted by a grand jury chosen from a venire from which Negro citizens were systematically excluded in violation of *Whitus v. Georgia*, 385 U.S. 545?

2. Was petitioner denied due process of law as guaranteed by the Fourteenth Amendment by being indicted by a grand jury chosen from a venire from which women had been systematically excluded?

3. Was petitioner denied due process of law as guaranteed by the Fourteenth Amendment where at trial a statement

was introduced, for impeachment purposes, that he allegedly had given to police officers shortly after his arrest and where the testimony of the police officer established that petitioner was not advised that he had the right to have a lawyer present at the time he gave any statement and that petitioner had not affirmatively waived his right to remain silent?

STATEMENT OF THE CASE

Petitioner, Claude Alexander, is under a sentence of life imprisonment imposed by the District Court for the Fifteenth Judicial District in Lafayette Parish, Louisiana, following his conviction for rape. His conviction was affirmed on appeal by the Supreme Court of Louisiana (A. 170).

Prior to trial petitioner filed motions to quash the indictment on the grounds that: (1) citizens of the female sex were systematically excluded from the grand jury list and venire and from the grand jury empaneled; and (2) citizens of the Negro race were included in the grand jury list, and grand jury venire, in such small numbers as to constitute only a token representation having no relationship to the number of Negroes in the general population in the Parish of Lafayette and in the Fifteenth Judicial District. Therefore, the indictment against him was invalid and illegal because it was returned by a grand jury empaneled from a grand jury venire made up contrary to the provisions of the Fourteenth Amendment to the Constitution of the United States of America (A. 6).

1. Facts Relating to Racial Discrimination in the Composition of the Jury.

Prior to trial a hearing was held on petitioner's motion to quash the indictment.[2] The evidence revealed that the jury commission was appointed by the court and consisted of five members (all of whom were white (A. 50)), including the clerk of the court of Lafayette Parish. The commission had selected a list of 400 prospective jurors to serve for the terms in which petitioner was indicted. Of these 400 prospective jurors 27 were Negroes, or 6.75%, and the race of 5 persons was unknown.[3] From this list 20 names were drawn, one of which was that of a Negro. From these 20, twelve, none of whom were Negro, comprised the actual grand jury that indicted petitioner (A. 3-4, 16-24, 39).[4] Petitioner's challenge to the grand jury centers on the manner in which the commissioners selected the 400 prospective jurors from which his grand jury was drawn.

---

[2] A. 29-65. The hearing was held jointly in the cases of petitioner and his co-defendant, Lee Perry Pratt. The Supreme Court of Louisiana decided the jury discrimination issues in Pratt's appeal. The relevant portions of that decision, *State of Louisiana v. Pratt*, 255 La. 919, 233 So.2d 883 (1970), are set out in the Appendix to this Brief.

[3] It should be noted that there are inconsistencies in the record as to the number of Blacks and of persons whose race is unknown out of the total of 400 persons. The State introduced as an exhibit a certification by the clerk of the court stating that there were 25 Negroes (or 6.25%) and 4 persons with no race shown (A. 15). A count of the actual list of jurors, however, (A. 16-24) shows 27 Negroes and 5 persons with no race. In this brief, however, the 27-5 figures will be relied on as establishing a prima facie case of racial discrimination.

[4] These figures were obtained from the testimony of the registrar of voters (A. 39) and by comparing the lists of the grand jury venire and the actual grand jury (A. 3-4) with the overall jury list (A. 16-24).

According to United States Census reports for 1960 (which were admitted into evidence below), the total number of persons in Lafayette Parish over 21 years of age and hence eligible for service on juries was 44,986. Thirty-five thousand, five hundred and thirteen were white and 9,473, or 21.06%, were black. Of these totals, the male population, the only group considered for jury service (see part 2, *infra*), consisted of 21,736 persons. Of this number, 17,331 were white and 4,405, or 20.27%, were Black.

The evidence as to the method used by the jury commissioners in compiling the grand jury lists was as follows: A list of names was obtained from several different sources, including the Lafayette City telephone directory, the city directory, the registrar of voters registration list, lists submitted by the parish school board or any list the commissioners could find, including recommendations made by the jury commissioners themselves (A. 35, 37). A questionnaire was mailed out to persons on the list to determine whether or not the individual was qualified to be considered as a candidate for the general venire list (A. 40-41).

As a result of this process, the commissioners obtained 7,374 questionnaires, 1,015 of which, or 13.76%, were from Negroes (A. 15).[5] On each questionnaire there was given the race of the individual involved (A. 8, 51). A card was then made up on each person for whom there was a questionnaire and was attached to the questionnaire (A. 36). Each card also designated the race of the prospective juror (see A. 7, 51). Finally, a white slip of paper containing only the name and address of the person was attached to the questionnaire and the card (A. 55-58).

At this point, the commissioners were ready to select four hundred[6] names to place in the box from which to

---

[5]One hundred and eighty-nine questionnaires had no racial designation (A. 15).

[6]Article 408, La. Code of Criminal Procedure, requires that at least three hundred names be drawn. The clerk testified, however, that four hundred were drawn in this case (A. 44).

draw grand jury venires of twenty names each. For each person they had a set of papers consisting of a questionnaire, a card and a slip of paper. On the first two, the race of the person was designated. The clerk testified that the commission worked from about 2000 of the sets which were placed on a table.[7] Sets were picked up, purportedly at random; the white slip of paper was removed and put into the box (A. 43, 48, 55-58).

At the end of this procedure the jury commission had selected four hundred names, 27 of which, or only 6.75%, were those of Blacks. For the purpose of selecting the grand jury that indicted petitioner twenty slips of paper were pulled from the box, one of which was that of a Negro (*i.e.*, 5% of the names were Negro). The lone Negro was not drawn to serve on the twelve-man grand jury. Thus, the grand jury that actually indicted petitioner included no Negroes at all. The clerk testified that no consideration was given to race during the selection procedure (A. 34, 35, 41, 45, 47-48, 54-57, 59). However, it was admitted that the documents used to select the venire contained racial designations, that the designation was referred to on occasion for identification purposes, and that the commissioners could have noticed the race of the persons during the selection process (A. 48, 51-52, 58-59).

2. The Facts Relating to the Exclusion of Women from the Jury Rolls.

The evidence established that women were totally excluded from juries in Lafayette Parish because of the operation of Article 402, La. Code of Criminal Procedure, which prohibits the selection of a woman unless she has filed a written declaration of her desire to serve (A. 32-33).

---

[7] After the questionnaires and cards were made up, they were reviewed and persons not qualified or exempted under the law were excluded (A. 52, 54-55).

The clerk of the jury commission testified that questionnaires were deliberately not sent to women (A. 35-36). Only preliminary efforts had been made to encourage women to declare their desire to serve.[8]

---

[8]The clerk of court (who is also a member of the jury commission) testified as follows:

Q. Did you act as a member of jury commission in drawing up a grand jury venire which made its return in the first week or two of September of this year?

A. Yes, sir.

Q. That would be the same grand jury that returned an indictment against Claude Alexander, do you know that, sir?

A. Yes, sir.

Q. Yes, Mr. LeBlanc, are you familiar with the procedures followed by the Jury Commission in drawing up the venire of three hundred names for the grand jury?

A. Yes, sir.

Q. And you participated in that procedure?

A. Yes, sir.

Q. In drawing up the list of three hundred names, were any citizens of the female sex included?

A. No.

Q. In fact, all women were excluded, isn't that right?

A. We didn't have any names submitted to us of any with the intention of willing to serve.

Q. And you didn't look for any names of women to serve on the jury, the grand jury?

A. That's right.

Q. And none were listed on the grand jury venire.

A. That right. (A. 32)

* * * * *

Q. Mr. LeBlanc, you would include the names of any women who volunteered service. Is that correct?

A. Yes.

Q. And as I understand, the reason you did not include women is because they are exempt from service unless they specifically volunteer and offer their service. Is that right?

A. Yes (A. 53).

* * * * *

According to the United States Census Report for 1960, the total number of women in Lafayette Parish over 21 years of age and hence eligible for service on juries over 23,250, with 5,068, 21.8%, being Black. By excluding women, therefore, more than 50% of the persons eligible to serve were automatically kept off juries. The jury list, the grand jury venire and the grand jury that indicted petitioner contained no women at all.

3. The Facts Relating to the Admissibility of Petitioner's Confession.

At the trial the prosecutrix and her boyfriend identified petitioner as one of the men who had committed the assault and rape. Policemen who came upon the scene similarly identified him as the person they had apprehended as he tried to flee. Petitioner took the stand and testified in his own defense. His story was that he had been in the park on his way to burglarize a club on the premises. As he was walking along, at about 1:30 A.M., he heard moans. He investigated and saw a white girl, nearly nude, at the bottom of a culvert. He went into the culvert, looked at the girl and started back out to go get help. At this instant, a light was shone in his face and he was arrested by police officers.

When petitioner had finished his direct testimony, the prosecutor announced that he would introduce a statement

---

Q. Were any invitations or notices sent to women advising that they had a right to declare their desire to serve on the jury?

A. I've discussed that with the Assistant District Attorney and I've sent her at different women's clubs to explain to the women the possibility of being on the jury. The reason so far that the women have not served is because facilities and accommodations for ladies were not available in the old courthouse. But since the new place is being constructed we're working on the women to submit names and intention to serve (A. 54).

allegedly given to police officers immediately after petitioner's arrest. The jury was excused, and a hearing was held before the judge to determine the admissibility of the alleged confession (A. 65-67). The testimony of the officers was that one of them advised petitioner that he had the right to remain silent, that anything he said could be used against him in court, that he was entitled to an attorney, that if he couldn't afford an attorney one would be offered to him, and also that he had the right to stop talking at anytime he felt like it (A. 70, 74, 85, 100-101). In response to a question by petitioner's counsel, however, the officer testified positively that petitioner had *not* been informed that an attorney would be appointed to be present at the time he gave a statement (A. 157-158).[9] Further, two of the officers testified positively that petitioner made no response to the warning given him. Rather, the interrogating officer testified that he just began asking questions and petitioner responded to them (A. 78-79, 90, 92).[10]

---

[9] Q. Captain, you did tell this man, did you, that he had a right to be advised by an attorney?

A. I advised him that he had a right to a lawyer.

Q. And that he had a right to have an attorney present when the statement was taken?

A. No, sir.

Q. You didn't tell him that?

A. No, sir (A. 157-158).

[10] Thus:

Q. Capt. Picard, you said that you told him something about his right to remain silent?

A. Yes, sir.

Q. And did he remain quiet and gave you no answer when you told him that?

A. Not during that saying, no, sir.

* * * * *

A. After I advised him of his rights I said, "What happened in the park?", and he told me.

* * * * *

Q. But he didn't tell you that yes, he would agree to talk, did he?

The questioning took place in the detective's office at the city police station at 2:30 A.M., immediately after petitioner's arrest (A. 67-68). The petitioner and three police officers were the only persons present. One officer asked questions, took notes of petitioner's answers (A. 93), and then reduced the alleged oral statement to writing (A. 68). The notes were then discarded (A. 95).

Petitioner testified that at the time of his arrest he had been handled roughly by the officers (A. 110-111). He further testified that he was refused the use of a telephone to call his mother at the time of the interrogation (A. 111-112), and that he told the interrogating officers that he was sleepy (A. 112-114). These allegations were denied by the officers.

All the witnesses testified that petitioner refused to sign the statement when the interrogating officer read it to him. The officers testified that the reason he gave was that he wouldn't sign it until he got his shoes back (A. 71, 73, 88). Petitioner testified, however, that it was because he hadn't said the things that were in the statement (A. 116, 117-119). In any event, the only signature on the statement from which the interrogating officer testified was that of the officer (A. 152).

The trial judge overruled petitioner's objections to the introduction of the purported confession, holding that it had been made voluntarily and that the proper *Miranda* warnings had been given (A. 123-126). The jury was re-

---

A. No, he just started talking.

* * * * *

Q. He just kept silent. Is that right, sir?

A. He kept silent until he told me what happened in the park.

* * * * *

Q. He said nothing to show you the state of his mind in response to your warnings until he began to say what occurred in the park, isn't that right, sir?

A. No, sir. (A. 78-79; see also A. 158.)

called and the interrogating officer was permitted to testify as to the statement. It was an admission of the crime and directly contradicted the story petitioner had given on the witness stand.[11]

4. Proceedings in the Courts Below.

As stated above, petitioner raised his constitutional objections to the jury selection procedures by motion prior to trial and objected at trial to the introduction of his alleged confession. As to the jury claims the trial court denied the motion to quash, relying on Louisiana and federal court decisions dealing with racial exclusion and on this Court's decision in *Hoyt v. Florida*, 368 U.S. 57, dealing with the exclusion of women from juries (A. 26). With regard to the introduction of the confession, the court held: (1) the confession was voluntary; and (2) there had been compliance with *Miranda v. Arizona*, 384 U.S. 436.

On appeal, the Supreme Court of Louisiana, in the companion case of *State v. Pratt*, 255 La. 919, 233 So.2d 883 (1970) (B.A. 9a) rejected both challenges to the grand jury venire (A. 172-174). The court held that purposeful exclusion of Negroes had not been shown, and also relied on *Hoyt v. Florida* to uphold the exclusion of women. With regard to the confession issue, the Supreme Court accepted the factual determination of the trial judge (A. 179). A rehearing was denied (A. 181), and a writ of certiorari was sought here.

---

[11]Petitioner also testified that the morning after his arrest he had given another statement to a detective that was substantially the same as the testimony he gave at the trial (A. 137-138).

SUMMARY OF ARGUMENT

I

Petitioner made out a *prima facie* case of racial discrimination in the selection of the venire from which the grand jury that indicted him was chosen. Although adult Negro males compose 20.27% of the population of Lafayette Parish, they represented only 6.75% of the jury venire of four hundred persons. The jury commissioners claimed that the four hundred persons were selected at random from a pool that was 13.76% black. However, statistical analysis demonstrates that it was improbable in the extreme that the reduction in the percentage of blacks could have resulted from random selection methods.

No explanation was given for these disparities, except for denials that race was considered when the venire was selected. However, at critical stages in the selection process the jury commission had a clear opportunity to discriminate, since the documents they worked with designated the race of the persons being considered for jury duty. Therefore, the grand jury was empaneled in violation of the equal protection clause of the Fourteenth Amendment.

II

By operation of a Louisiana statute that excludes all women from jury duty unless they volunteer for service, no women whatsoever were on the jury rolls. This result largely was caused by the jury commission's deliberately not sending jury questionnaires to women during the process by which they developed a pool of names to be considered for service. Thus, this case is distinguishable from *Hoyt v. Florida*, 368 U.S. 57 (1961), relied on by courts below, since the affirmative action of the commission was responsible for the total absence of women from the rolls. In contrast, there were at least some women on the rolls in *Hoyt*.

The total exclusion of women from jury service denied petitioner his right to a jury venire reasonably representative of a cross-section of the community as a whole. Louisiana has offered no valid justification for the use of a scheme that has had the totally exclusionary effect shown here. Therefore, the indictment of petitioner violated his right to due process of law guaranteed by the Fourteenth Amendment.

III

At petitioner's trial, an alleged confession was introduced by the state for impeachment purposes that was obtained without compliance with *Miranda v. Arizona*, 384 U.S. 436 (1966). This case is distinguishable from *Harris v. New York*, 401 U.S. ___, 28 L.Ed.2d 1 (1971), in that the circumstances surrounding the giving of the confession raise serious doubt as to its reliability. *Harris* should be limited to those cases where the confession involved is of the same order of reliability as physical evidence that has been seized in violation of the Fourth Amendment. Therefore, petitioner was denied his right to due process by the introduction of the confession against him.

ARGUMENT

I

PETITIONER WAS DENIED EQUAL PROTECTION OF THE LAW IN THAT NEGROES WERE SYSTEMATICALLY EXCLUDED FROM THE GRAND JURY THAT INDICTED HIM.

At the time of the indictment of petitioner the grand jury list and venire for Lafayette Parish, Louisiana was made up from various lists secured by the jury commissioners (A. 35-36).[12] A questionnaire was mailed out to

[12] In this case, only the grand jury was challenged. Thus, this case is like, *e.g.*, *Eubanks v. Louisiana*, 356 U.S. 584 (1958).

every eighth person on the list thus compiled by the jury commission (A. 40-41).[13] The race of the individual was listed on the questionnaire (A. 8). When the questionnaires were returned, the commissioners determined which persons were qualified for jury service. For each such person a card was made out which also designated race (A. 7) and the card was attached to the questionnaire. Slips of paper on which were written only the name and address of the individual were then attached to the questionnaire and card. Sets of questionnaires, cards and slips were picked until 400 names were chosen. The slips of paper alone were then deposited in the general venire box from which jury venires were drawn.

At the beginning of this process the jury commission had started with an eligible male population that was 20.27% black. They received back 7,374 questionnaires, 1,015 of which, or 13.76%, were from Negroes.[14] From these questionnaires they picked a jury venire of 400 names, 27 of which, or only 6.75% were black,[15] and finished with a 20-man venire containing only one black. The twelve men on the grand jury that actually indicted petitioner were all white.

A. Petitioner Made Out a Prima Facie Showing of Racial Discrimination in the Selection of the Grand Jury that Indicted Him.

This Court has long held that where statistically significant disparities between the percentage of Negroes eligible to serve on juries and the percentage on jury rolls has been shown, a prima facie case of racial discrimination has been made. *Turner v. Fouche*, 396 U.S. 346, 359 (1970); *Sims*

---

[13]If the eighth person was exempt by law from jury service, however, then the next eligible individual was selected (A. 35-36).

[14]One Hundred and Eighty Nine had no racial designation (A. 15).

[15]Five of the 400 were unidentifiable as to race.

v. Georgia, 389 U.S. 404 (1967); *Jones v. Georgia*, 389 U.S. 24 (1967); *Whitus v. Georgia*, 385 U.S. 545 (1967); *Patton v. Mississippi*, 332 U.S. 463 (1947); *Norris v. Alabama*, 294 U.S. 587 (1935). Once such a showing has been made, the state has a heavy burden of rebuttal, which may *not* be satisfied by testimony, as here (A. 34; 35; 41; 45; 47-48; 54-57; 59), of jury officials that they did not include or exclude any one because of race. See, *Turner v. Fouche*, 396 U.S. at 361, and cases cited there at n. 21.

Petitioner here made such a showing. Lafayette Parish has a population of 20.27% black males. Only 13.76% of the names of persons obtained by the commission by use of questionnaires were black. The actual jury list compiled from these questionnaires and from which the grand jury was drawn contained only 6.75% black names. And even if the five persons whose race was not known are assumed to have been Negro, the percentage was still only 8%.

The state has simply failed to provide any adequate reason for these results. With regard to the disparity between the percentage of blacks in the parish and the percentage of blacks among those returning questionnaires, the clerk of the commission testified that he was aware of the fact that there had been a lower rate of response from Negroes. Indeed, he admitted that because of the sources of names that were used, "naturally there was a greater percentage of personal mail to the white people than to the Negroes. And for that reason it follows that we had larger replies from the white than from the colored" (A. 45-46). Thus, it was clearly established that the commission had failed in its constitutional duty to utilize methods that would result in a jury list "... 'truly representative of the community,' " as required by *Carter v. Greene County*, 396 U.S. 320, 330 (1970), and by *Turner*.

Even more serious, and as equally lacking in a constitutionally acceptable explanation, is the large drop from 13.76% blacks returning questionnaires and 6.75% blacks on the actual jury list. The clerk testified that the more

than 7,000 returned questionnaires were examined to determine who among the returnees were eligible for service until about 2000 were left (A. 52; 54-55). No evidence was offered by the state as to the racial breakdown of those excluded, so it is not known whether the remaining questionnaires reflected the same 86.24% white–13.76% black ratio as did the total number of questionnaires. It is clear from *Turner*, however, that the burden was on the state to justify and explain any drop in the percentage of blacks resulting from this weeding out process, if any in fact did take place. 396 U.S. at 359-361.

The two thousand or so questionnaires that were left were then placed on a table, and 400 were picked. Of these, only 27 were blacks, and for five the race was not known. The selection procedure was purportedly a random one (A. 55-58). Petitioner urges, however, that by the use of accepted methods of statistical analysis it can be shown that the chances of this result being obtained by a random system are so small as to lead irresistibly to the conclusion that random methods were not used in fact.[16]

The approach to be used is that described at length in Finkelstein, *The Application of Statistical Decision Theory to the Jury Discrimination Cases*, 80 Harv. L. Rev. 338 (1966), referred to by Mr. Justice Clark, writing for the Court in *Whitus v. Georgia*, 385 U.S. 545, 552, note 2. In that article, Finkelstein suggests an approach to jury discrimination cases more exact than simply attempting to infer discrimination from what appear to be significant disparities between percentages of Negroes in the general population and in jury lists, the intuitive approach typically used. He points out that statistical analysis provides a ready tool by which courts can determine the probability

---

[16]The argument that follows is based on the assumption that the proportion of blacks in the 2000 questionnaires used for selection was the same as that in the 7,434 received, *i.e.*, 13.76%. As noted above, if the percentage was significantly less than that, the state failed in its burden to explain any disparity.

of particular numbers of blacks being on lists if a random method of jury selection was indeed used. If the probability in a particular case is significantly small, then it can be concluded that the selection process was not random. Thus, in the absence of an alternative explanation of why the number of Negroes is small, it can be inferred that race was a factor in choosing the jury. In his conclusion, Finlestein points out:

> A basic legal principle in the jury discrimination cases is that the selection of an improbably small number of Negroes is evidence of discrimination . . . The second legal principle controlling these cases is that a disparity between the proportion of Negroes on venires and in the population generally is evidence of the improbability of random selection. 80 Harv. L. Rev. at 374.

In his article Finkelstein demonstrates how a number of methods can be used to calculate these probabilities. Here, we will use a simplified version of the chi-square method he describes at 80 Harv. L. Rev. at 365-373. The method and formula used are explained in *Moroney, Facts from Figures,* a book explaining statistical method and written for laymen without mathematical training.[17] This method, it should be noted, is a conservative one—that is, it approximates the highest possible probability of the particular result coming about by chance. As will be noted, the actual probability is much lower.

Turning to the facts in the present case, the first step in the calculation is to ascertain the number of blacks that would have appeared on the final jury list of 400 people if the proportion was the same as for the questionnaires. Since this was 13.76%, there would have been 55.04 blacks rather than only 27. What, then, is the probability that 27 or

---

[17] 3rd and Revised Edition, Baltimore, Md., 1965 (Penguin Books-Pelican), Ch. 15, pp. 246-270. The formula can be found on page 250. A copy of this book has been deposited with the Clerk for the convenience of the Court.

fewer Negroes would appear on the list if the selection were random as claimed by the jury clerk? The chi-square formula, explained in detail in the margin below,[18] shows

---

[18]The steps in the computation were as follows:

1. The formula used was:

$$\text{chi-square} = \frac{(A_w - E_w)^2}{E_w} + \frac{(A_n - E_n)^2}{E_n}$$

2. The arithmetic values were as follows:

	Actual (A)	Expected (E)
White (w)	373 (A_w)	344.96 (E_w)
Negro (n)	27 (A_n)	55.04 (E_n)
Total	400	400.00

(As noted above, the "expected" figures given above merely reflect the relative percentages of Negroes and whites among the questionnaires, *i.e.*, total jurors times percentage of Negroes among questionnaires equals expected Negro jurors, or 400 x 13.76% = 55.04.)

3. Applying the formula, thus:

$$\text{chi-square} = \frac{(373 - 344.96)^2}{344.96} + \frac{(27 - 55.04)^2}{55.04}$$

$$= \frac{(28.04)^2}{344.96} + \frac{(-28.04)^2}{55.04}$$

$$= \frac{786.24}{344.96} + \frac{786.24}{55.04}$$

$$= 2.279 + 14.285$$

$$\text{chi-square} = 16.564$$

4. To translate the chi-square numbers to determine probability we used the table published in the National Bureau of Standards Handbook of Mathematical Functions (National Bureau of Standards, Applied Mathematics Series, No. 55, June 1964, Govt. Printing Office, p. 982.) For a chi-square number of 16.564, the probability is five in 100,000, or .00005.

that that probability is at best only .00005, or five in 100,000.[19] Stated another way, the probability is that this result would obtain only once in 20,000 random selections.[20]

Thus, it has been established that, because of the number of Negroes selected, the probability that the four hundred names were selected at random, as claimed by the state, is so low as to render that claim inherently suspect. The disparity shown, as the Court said in *Whitus*, "strongly points" to the conclusion that race was considered by the jury commissioners. 385 U.S. at 551. As will now be shown, the commissioners had a clear opportunity to utilize racial considerations.

B. The Evidence Established That There Was an "Opportunity for Discrimination" in Violation of Whitus v. Georgia and Avery v. Georgia.

In *Whitus v. Georgia*, 385 U.S. 545 (1967), and *Avery v. Georgia*, 345 U.S. 559 (1953), this Court dealt with a combination of a disparity between blacks eligible for jury duty and blacks on the jury rolls and of what it termed an "opportunity for discrimination" by those involved in the jury selection process. 385 U.S. at 552. In *Avery*, different colored tickets were used for white and Negro prospective

---

[19]Dr. John de Cani, a professor of statistics at the University of Pennsylvania has calculated the exact probability as being only .0000043, or less than 5 in one million. Thus, it may be noted, is less than the probability noted by Mr. Justice Clark in *Whitus*, which was .000006, or six in one million. 385 U.S. at 552, no. 2.

[20]Even if it is assumed that all five of the persons whose race was unknown were black, the probability is only three in ten thousand. (.0003). The relevant figures under this assumption are Aw=368, An=32, Ew=344.96, En=55.04, chi-square=11.184. And if the five unknowns are excluded altogether, the probability is five in one hundred thousand. (.00005). (Aw=368, An=27, Ew=340.65, En=54.35, total jurors=395, chi-square=15.959.)

jurors. In *Whitus*, names of prospective jurors were selected from tax digests segregated according to race. See also *Bostick v. South Carolina*, 386 U.S. 479 (1968); *Jones v. Georgia*, 389 U.S. 24 (1967); *Sims v. Georgia*, 389 U.S. 404, 407-08 (1967); *Anderson v. Georgia*, 390 U.S. 206 (1968). In both instances, convictions were reversed because of the danger of abuse inherent in a system where the race of jurors could be known at critical stages in the jury selection process.

This case presents facts indistinguishable from *Whitus* and *Avery*. A significant statistical disparity has been shown above, and an opportunity to discriminate was present at at least two stages in the process. As has already been noted, race was requested on the questionnaires sent out to all prospective jurors; the inquiry was answered in all but 189 of 7,374 of the returned questionnaires (A. 15). A card was filled out for each juror which also contained a racial designation. The questionnaire and card were attached together and were used in the process by which the possible percentage of Negroes to be included in the jury rolls was reduced from 13.76% to 6.75%.

Thus, the questionnaires were used to reduce the number of possible jurors from 7,374 to about 2000. The questionnaires and cards were also used to select from that 2000 the 400 names that would be put into the venire box. The only justification given for the racial designation was that it was used, on occasion, for the purpose of identifying the individual who had sent back the questionnaire (A. 51). No explanation was given, however, as to why the race of the person had any relevance in determining his qualifications to serve. Moreover, it was admitted that the commissioners had the opportunity to look at the question-

naires and notice the race of the person in question (A. 58).[21]

Thus, this case presents precisely the situation that obtained in *Avery* and *Whitus*. There was a significant disparity between eligible Negroes and those ultimately placed on the jury rolls that was unexplained by the State except for general statements that the commissioners did not take race into account. There was a clear opportunity to discriminate because prospective jurors were identifiable as to race at critical stages in the selection process. Just as in *Whitus*, it cannot be said "on this record that [the opportunity to discriminate] was not resorted to by the commissioners." 385 U.S. at 552.

In summarizing petitioner's contentions concerning racial discrimination in the selection of the grand jury venire, we wish to re-emphasize the cumulative effect of the jury selection process detailed above. The commissioners began with an adult male population that was 20.27% black. If the final venire of four hundred persons had reflected this proportion, it would have contained 81 Negroes and 319 whites instead of the actual 27 Negroes and 373 whites. However, the commission developed a basic pool that was only 13.76% black (6359 whites, 1015 Negroes) by the use of methods that they knew were likely to elicit a smaller proportion of black than white responses. Even so, a 13.76% figure for the venire would produce 55 black persons and 345 whites. The wide divergence from these figures indicates, as shown above, that a random method of selection was not used.

At two crucial steps in the process, when the questionnaires were reduced to two thousand and when the final selection of the four hundred names was made, there was

---

[21] Significantly, the clerk agreed that the proof of whether race was considered would be "how many colored or how many white are actually included in the four hundred selected from the two thousand" (A. 58).

the clear opportunity to discriminate condemned by this Court, because racial designations appeared on the forms used by the commission. The net result was that only 27 Negroes were on the grand jury venire of 400 persons. When 20 names were drawn in order to constitute the actual grand jury that indicted petitioner, only one person was black and he was not picked to serve on the twelve-man jury. Thus, by a consistent process of progressive and disproportionate reduction of the number of blacks, the ultimate result was reached—an all-white grand jury that returned the indictment challenged here. Because of racial discrimination in the selection of the grand jury, the indictment must be quashed and the conviction based on it vacated, *Hill v. Texas*, 316 U.S. 400 (1942).

II

THE TOTAL EXCLUSION OF WOMEN FROM JURIES IN LAFAYETTE PARISH DEPRIVED THE PETITIONER OF A JURY REPRESENTING A CROSS-SECTION OF THE COMMUNITY IN VIOLATION OF THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT.

It is clear in this case that there were no women on the jury rolls in Lafayette Parish. The clerk of the jury commission testified that this was because of the effect of Article 402, La. Code of Criminal Procedure, on the manner in which the commission proceeded to obtain names of prospective jurors. That section expressly excludes all women except for those who had previously filed a declaration stating their desire to serve.

The clerk testified that in selecting names of persons to whom questionnaires were to be sent, the names of women were deliberately passed over. Moreover, only preliminary efforts had been made to encourage women to volunteer to serve.

According to the United States Census Report for 1960, the total number of women in Lafayette Parish over 21

years of age, and hence otherwise eligible for service on juries, was 23,250, with 5,068 being black. Since the total population of the Parish over 21 was 44,986, therefore, 51.7% of the persons eligible to serve were automatically kept off juries by the exclusion of women.

Both the trial court and the Supreme Court of Louisiana relied on the decision of this Court in *Hoyt v. Florida*, 368 U.S. 57 (1961), in upholding this result, the latter saying that "[i]t is well settled that the fact that women do no appear on a general venire list for jury duty furnishes no cause for quashing an indictment in view of Article 402 of the Code of Criminal Procedure." (A. 173.)

Petitioner contends that the Louisiana Supreme Court's reliance on *Hoyt* was misplaced, since his case raises the issue left open by *Hoyt*, viz., whether the total exclusion of women from juries violates the due process clause of the Fourteenth Amendment. Petitioner urges that *Hoyt* should not be extended to approve such total exclusion.

A. This Case, Unlike Hoyt, Involves the Total Exclusion of Women from Juries.

In *Hoyt*, this Court sustained a Florida statute[22] essentially the same as Article 402 against attacks on its constitutionality both on its face and as applied. It is with regard to the latter aspect of *Hoyt* that petitioner contends that the present case presents facts sufficiently different to require a different result.

---

[22] Fla. Stat. Ann. § 40.01(1): ". . . provided, however, that the name of no female person shall be taken for jury service unless said person has registered with the clerk of the circuit court her desire to be placed on the jury list." As will be discussed below, in 1967 this section was amended to remove this provision and substitute an exemption limited to "expectant mothers and mothers with children under eighteen (18) years of age, upon their request . . ." Laws 1967, C. 67-154, § 1.

In *Hoyt*, the Court pointed out that it found "no substantial evidence whatever in this record that Florida has arbitrarily undertaken to exclude women from jury service" (386 U.S. at 69). Similarly the Chief Justice and Justices Black and Douglas concurred in the result since they could not say "from this record that Florida is not making a good faith effort to have women perform jury duty without discrimination on the ground of sex." (*Ibid.*) These conclusions were supported by the facts that there were women on the jury rolls in the county, and that efforts had been made to include all eligible women on the rolls. Thus, it could not be concluded that the jury commissioners had acted in any way to purposefully exclude women discriminatorily (368 U.S. at 68).

The record in this case presents a far different picture when the jury selection procedures utilized are examined. The jury commissioners used a variety of sources to obtain names of persons to whom preliminary questionnaires would be mailed. These questionnaires were not for the purpose of actually summoning persons to jury duty, but only to determine eligibility. Despite this, women were deliberately passed over as persons to whom questionnaires would be sent.[23] Moreover, only preliminary attempts had been made to encourage women to declare their desire to serve on juries (A. 54). The result of these practices was that there were no women whatsoever on the jury lists. No explanation was given as to why it would not have been possible to send questionnaires encouraging women to volunteer to serve and thereby to obtain at least some representation on the jury rolls.

Thus, unlike *Hoyt*, the record in this case demonstrates that the jury selection procedures deliberately avoided placing women on juries. The affirmative actions of the

[23] Questionnaires were sent to every eighth person on the registrar of voter's list. However, if that person "was a doctor or *if it was a lady* or if it was a school bus driver" the name was passed over and no questionnaire was sent (A. 35-36).

commissioners were an important factor in there being no women on the jury lists at all.

B. The Total Exclusion of Women Violates the Requirement of Representative Juries Imposed by the Due Process Clause.[24]

In *Carter v. Jury Commission of Greene County*, 396 U.S. 320 (1970), this Court defined "the very idea of a jury" as being "'a body truly representative of the community.'" (396 U.S. at 330.) Thus, the Court established firmly what it had earlier suggested in *Smith v. Texas*, 311 U.S. 128 (1940), that the exclusion from jury service to any large, identifiable, and significant group in the community violates the requirements of due process. See *Labat v. Bennett*, 365 F.2d 698, 719-24 (5th Cir. 1966.)[25]

It is clear that the practice approved by the courts of Louisiana in the case violated this fundamental requirement. First, as shown above, more than 50% of adults were automatically and totally kept off the jury rolls. Second, the persons were excluded solely because they belonged to a particular group, women. Third, it is clear that women are a significant, identifiable group of the community within the meaning of the cases cited above.

This Court specifically so held in a case involving the administration of the federal jury selection statutes, *Ballard v. United States*, 329 U.S. 187 (1946).

---

[24]Since petitioner is male, his challenge arises under his due process right to a jury venire from which *no* class has been arbitrarily excluded. See *Labat v. Bennett*, 365 F.2d 698, 723-24 (5th Cir. 1966).

[25]In *Labat*, the Fifth Circuit, in dealing with the total exclusion of wage earners as a class from Louisiana juries, read into the constitutional requirement of representative jury rolls this Court's holdings in *Glasser v. United States*, 315 U.S. 60 (1941), and *Thiel v. Southern Pacific Co.*, 328 U.S. 217 (1946), which dealt with interpretations of federal jury statutes.

> It is said, however, that an all male panel drawn from the various groups within a community will be as truly representative as if women were included. The thought is that the factors which tend to influence the action of women are the same as those which influence the action of men—personality, background, economic status—and not sex. Yet it is not enough to say that women when sitting as jurors neither act nor tend to act as a class. Men likewise do not act as a class. But, if the shoe were on the other foot, who would claim that a jury was truly representative of the community if all men were intentionally and systematically excluded from the panel? The truth is that the two sexes are not fungible; a community made up exclusively of one is different from a community composed of both; the subtle interplay of influence one on the other is among the imponderables. To insulate the courtroom from either may not in a given case make an iota of difference. Yet a flavor, a distinct quality is lost if either sex is excluded. The exclusion of one may indeed make the jury *less representative of the community than would be true if an economic or racial group were excluded.* (329 U.S. at 193-94) (Emphasis added; footnotes omitted.)

Hence, it was concluded, the exclusion of women denied the right to a jury selection procedure that would result in rolls being representative of the community as a whole. *Ballard*, of course, involved the administration of the federal jury selection statutes. Petitioner urges, however, that its reasoning compels the same result under the constitutional standard as enunciated in *Carter*. The right in both instances is to a jury list selected so as not to exclude a representative cross-section of the community; for the reasons set out in *Ballard* a selection process that excludes all women violates that fundamental right.

Thus, a three-judge federal district court struck down an Alabama statute which, by prescribing that one of the qualifications for jury service was that the person be a male cit-

izen,[26] totally excluded women for jury service (*White v. Crook*, 251 F.Supp 401 (M.D. Ala. 1966). The court said:

> The time must come when a state's complete exclusion of women from jury service is recognized as so arbitrary and unreasonable as to be unconstitutional. 251 F. Supp. at 409.

Therefore, the court held, the Alabama statute violated the Fourteenth Amendment.

This case, of course, like *Hoyt*, involves a statute which is not on its face an absolute prohibition on women serving on juries.[27] Petitioner urges, however, that on the factual showing made here the statute operates as such a prohibition, so that this case is in all essentials the same as *White v. Crook*.

The Louisiana statute singles out women and excludes them automatically unless they volunteer to serve by filing a declaration to that effect with the court. Presumably, the state will seek to justify a scheme which operates to exclude all women on the ground that it is not wholly irrational in light of assumptions concerning the general role of women in society. Petitioner contends, on the other hand, that once a denial of a constitutional right has been shown—here, to jury selection methods that result in jury lists representative of the community as a whole—the State must be put to a much stricter test of justifying what it has done. Thus, it must show that its legitimate goal—exempting women with family responsibilities who would suffer hardships if forced to serve on juries—cannot be

---

[26] Title 30, § 21, Code of Alabama, Recompiled 1958.

[27] At the present time, no state has such an absolute prohibition. The three states that barred women totally at the time of the decision in *Hoyt* have since amended their statutes. Compare the statutes cites in *Hoyt*, 368 U.S. at 62, n. 5, with Ala. Code 1940, Tit. 30, §§ 21, 21.1, as amended 1966 Ex. Sess. p. 429, § 4, p. 427, § 1; Mississippi Code 1942 Ann. (1956), § 1762, as amended by laws, 1968, Ch. 335, § 1; and South Carolina Code 1962, § 38-52, as amended, 1967 (55) 895.

accomplished by more narrow means that will not result in fact in a denial of constitutional rights. In other words, a *compelling* need for Article 402 must be shown. *Shapiro v. Thompson*, 394 U.S. 618, 634 (1969).

It is submitted that such a showing simply cannot be made. Rather, Louisiana is now in the position, along with one other state, New Hampshire,[28] as having a jury selection scheme most likely to keep all women from serving on juries. As pointed out above, Alabama, Mississippi, and South Carolina no longer exclude women from jury service,[29] and Florida, the state involved in *Hoyt*, now calls women for jury service on the same basis as men and limits its special exemption to women who are pregnant or who have children under eighteen who affirmatively request exemptions.[30] Of the sixteen jurisdictions (excluding Louisiana and New Hampshire) noted by this Court in *Hoyt*[31] that allowed women an absolute exemption based on their sex *if requested*, five states have now placed women on essentially the same basis as men and allow exemptions only for specific occupations.[32]

Thus, the vast majority of states either treat women no different than men, or allow women to be excused from jury duty by focusing specifically on the question of whether family duties in the particular case require an exemption. Even those states which allow a blanket exemp-

---

[28]N.H. Rev. Stat. Ann., 1955 § 500:1.

[29]See footnote 27, *supra*.

[30]Fla. Stat. Ann. § 40.01, as amended, Laws 1967, C. 67-154, § 1.

[31]368 U.S. at 62, n. 6.

[32]*Idaho* (Idaho Code § 2-411 has been repealed); *Minnesota* (Minn. Stat. Ann., § 593.02, as amended); *North Dakota* (North Dakota Cent. Code § 27-09-04, repealed by S.L. 1967, Ch. 251, § 1); *Virginia* (Va. Code § 8-178(30) amended, now exempts *housewives* rather than *women*); *Washington* (Wash. Rev. Code, § 2.36.080, amended to remove exemption of women *per se*).

tion based on sex call women for jury duty and put the burden on them to request the exemption. Such a scheme is at least far more likely to result in women being on jury rolls in some numbers in contrast to the operation of the Louisiana statute as shown here.

In sum, the Louisiana statutory scheme simply goes much further than necessary to achieve any legitimate goal of the state. It very well may be permissible to excuse women with family obligations from jury duty. But the statute does not focus with sufficient particularity on this restricted objective. Rather, it rests on the wholly unwarranted assumption that all women are bound to be so enmeshed in family obligations that they can be assumed not to be able to serve on juries. Recently, this Court has rejected such an assumption as a basis for denying employment to women because of the operation of the Civil Rights Act of 1964. *Phillips v. Martin Marietta Corp.*, 400 U.S. 542 (1971). Surely the Constitution's requirement that jury rolls be representative of the community as a whole compels the same result.[33] This is particularly true in light of the fact that virtually every other state has found it possible to achieve the legitimate state purpose of exempting those women who would actually suffer hardships because of family responsibilities without resorting to a statutory scheme whose result is to have no representation of women on jury rolls whatsoever.

---

[33] As the Court in *White v. Crook* found and held:

> [T]he exclusion of women from jury service in Alabama by a statutory provision is arbitrary in view of modern political, social, and economic conditions . . . ." 251 F.Supp. at 409.

III

THE INTRODUCTION OF PETITIONER'S ALLEGED CONFESSION VIOLATED HIS RIGHTS TO DUE PROCESS OF LAW.

It is clear from the record that the requirements of *Miranda v. Arizona*, 384 U.S. 436 (1966), were not complied with in two important respects before petitioner's statement was taken.[34] Unquestionably, an attempt to give a *Miranda* warning was made;[35] however, the interrogating officer failed to inform petitioner that he was entitled to have an attorney present at the time a statement was given. Indeed, he testified explicitly that he had *not* informed petitioner of that right.[36] In *Miranda*, however, this Court held that that specific warning was "an absolute prerequisite to interrogation." 384 U.S. at 471.

The second failure to comply with *Miranda* arose from the fact that there was no affirmative, intelligible waiver of the defendant's rights, and that such a waiver does not appear on the record. This Court specifically rejected the notion that waiver could be inferred by the silence of the accused, or by the fact that he responded to questioning after the warning was given:

> Moreover, where in-custody interrogation is involved, there is no room for the contention that the privilege is waived if the individual answers some questions or gives some information on his own prior to invoking his right to remain silent when interrogated. 384 U.S. at 475-76.

Here, however, the interrogating officer testified that after he gave petitioner a warning, petitioner simply began answer-

---

[34]Petitioner was tried in 1968, after the effective date of *Miranda*.

[35]See, A. 70, 74, 85, 100-101.

[36]A. 157-158 (quoted *supra*, in footnote 9).

ing questions. There clearly was no affirmative waiver of his rights as required by *Miranda*.[37]

Hence, the conclusion is inescapable that the testimony of the officers themselves establishes a failure to comply with *Miranda*, and the conclusions of the courts below to the contrary rested on a misunderstanding of that decision. If, therefore, the confession had been introduced as part of the prosecution's case in chief, rather than for impeachment purposes, the conviction would have to be reversed.[38]

However, after the petition for writ of certiorari was filed in this case, this Court handed down its decision in *Harris v. New York*, 401 U.S. ____, 28 L.Ed.2d 1 (Feb. 24, 1971). *Harris* held that, even though a confession was taken in violation of *Miranda*, it could be used to impeach the testimony of a defendant. Petitioner urges that his case is distinguishable from *Harris*, and that that decision should be limited to circumstances where there is no question but that the confession to be introduced is fully reliable.

Harris relied on the decision in *Walder v. United States*, 347 U.S. 62 (1954). *Walder* involved the admissibility of physical evidence seized in violation of the Fourth Amendment to impeach testimony given by a defendant. Walder, who was being prosecuted for violation of the federal narcotics laws, testified that he had never sold or possessed any narcotics in his life. The government then put in evidence concerning a heroin capsule seized from Walder's home, including testimony of a chemist who had analyzed the capsule. As is the case in virtually all cases involving the admissibility of physical evidence, there was no question as to the reliability of the particular piece of evidence; as to that issue, the illegality of the search had no bearing.

---

[37](A. 78-79; 90; 92; 158.) See footnote 10, *supra*, for the Officer's testimony.

[38]As will be discussed below, the impact of the confession was such so that its introduction could not said to be harmless error under the rule of *Chapman v. California*, 386 U.S. 18 (1967).

Confessions, on the other hand, present an entirely different question. *Miranda* is rooted in this Court's long experience in grappling with problems of the inescapable uncertainties that arise when it is claimed that a defendant has confessed in a police station, in the presence of officers only, and without aid of counsel or any other assistance. The circumstances of this case vividly illustrate the validity of that concern.

Petitioner, a black teenager, was placed alone in an interrogation room with three armed police officers at about 2:30 a.m. He was charged with a serious crime—the rape of a white woman. He was without counsel and had not contacted his parents. The interrogating officer failed to inform him fully of his constitutional rights, and the record shows that he did not waive those rights. There was no stenographer to take down his statement and no tape recording was made, even though court reporters and recording machines were available (A. 93-94). One officer asked questions and responses were given; the officer jotted down notes and then typed a statement.

When the officer read the statement to petitioner, he refused to sign it. The officers testified that he said he would not sign it because he didn't have his shoes; petitioner testified that he refused because the statement was not what he said. He contended that he did not commit the crime, while the statement was an admission of his participation in it. The next morning he gave a statement to a detective that, he claimed, substantially agreed with the version he gave at trial.

Thus, this case presents a classic example of the circumstances *Miranda* sought to avoid. Although it cannot be said that the statement was coerced, the atmosphere in which petitioner was placed, together with his adamant refusal to sign the alleged confession must give rise to serious doubt as to what in fact went on and what in fact was said by petitioner. The inherent and inescapable questions as to the reliability of the statement compel the con-

clusion that, in the absence of proper *Miranda* warnings, it was inadmissible for any purpose.

This result under these facts would not mean, of course, that confessions unaccompanied by proper *Miranda* warnings, would necessarily be unreliable. The use of a court reporter or the tape recording of a statement or the signing of a statement by a defendant would create the same kind of reliability that attaches to physical evidence such as was involved in *Walder* and other search and seizure cases. Absent such objective indicia of reliability, however, the concerns that prompted the decision in *Miranda* must prevail.

Finally, it is clear that the use of the alleged confession was not harmless error within the meaning of *Chapman v. California*, 386 U.S. 18 (1967). Petitioner gave in his defense a story that was consistent with his presence at the scene of the crime but which exculpated him. Whether the jury would have believed him without the confession being introduced is, of course, impossible to tell. But there can be no doubt that the introduction of a confession to the crime that directly contradicted his direct testimony could only have had a devastating impact against him that made it improbable in the extreme that the jury would accept his story.

CONCLUSION

For the foregoing reasons, the indictment against petitioner should be dismissed and his conviction reversed.

Respectfully submitted,

Jack Greenberg
James M. Nabrit, III
Charles Stephen Ralston
Margrett Ford

10 Columbus Circle
New York, New York 10019

Charles Finney

P.O. Box 3463
Lafayette, Louisiana 70501

Attorneys for Petitioner

APPENDIX

1. STATUTES OF LOUISIANA RELATING TO JURY SELECTION

Louisiana Code of Criminal Procedure, Vol. 1, pp. 317-391, articles 401-04, 408, 410-411, 413-417, 419. Note: In 1968, following the trial of petitioner, amendments were made to certain of these statutes. Following is the text of the statutes as of the time of petitioner's trial. The amended statutes are set out in a footnote to each of the altered sections.

Art. 401 – In order to qualify to serve as a juror, a person must:

(1) Be a citizen of the United States and of this state who has resided within the parish in which he is to serve as a juror for at least one year immediately preceding his jury service;

(2) Be at least twenty-one years of age;

(3) Be able to read, write, and speak the English language;

(4) Not be under interdiction, or incapable of serving as a juror because of a mental or physical infirmity; and

(5) Not be under indictment for a felony, nor have been convicted of a felony for which he has not been pardoned.

Art. 402 – A woman shall not be selected for jury service unless she has previously filed with the clerk of court of the parish in which she resides a written declaration of her desire to be subject to jury service.

Art. 403 – The following persons are exempt from jury service, but the exemption is personal to them and is not a ground for challenge:

(1) The governor, lieutenant governor, state comptroller, state treasurer, secretary of state, superintendent of public education, their clerks and employees, the members, officers, and clerks of the legislature, and the judges and active officers of the several courts of this state;

(2) Any other public official, if jury service would seriously interfere with the performance of his official duties;

(3) Attorneys-at-law, peace officers, ministers of the gospel, physicians and dentists actively engaged in the practice of their professions, school teachers, school bus drivers, pharmacists, members of paid fire departments, chiefs and their first assistants of bona fide volunteer fire departments, and persons who are required to travel regularly and routinely in the course and scope of their employment;

(4) Persons who because of age, sickness, or other physincal infirmity would suffer serious detriment if required to serve as a juror; and

(5) Persons who have served as grand or petit jurors in criminal cases or as trial jurors in civil cases during a period of twelve months immediately preceding their selection for jury service. Amended by Acts 1968, No. 108. § 1.[1]

---

[1] Art. 403 – The following persons are exempt from jury service, but the exemption is personal to them and is not a ground for challenge:

(1) The governor, lieutenant governor, state comptroller, state treasurer, secretary of state, superintendent of public education, their clerks and employees, the members, officers, and clerks of the legislature, and the judges and active officers of the several courts of this state;

(2) Any other public official, if jury service would seriously interfere with the performance of his official duties;

(3) Attorneys-at-law, peace officers, ministers of the gospel, physicians and dentists actively engaged in the practice of their professions, school teachers, school bus drivers, pharmacists, members of paid fire departments, chiefs and their first assistants of bona fide volunteer fire departments, and persons who are required to travel regularly and routinely in the course and scope of their employment;

(4) Persons who because of age, sickness or other physical infirmity would suffer serious detriment if required to serve as a juror; and

(5) Persons who have served as grand or petit jurors in criminal cases or as trial jurors in civil cases during a period of three years immediately preceding their selection for jury service.

Art. 404 – The jury commission of each parish shall consist of five members, each having the qualifications set forth in Article 401.

In Orleans Parish the jury commission shall be appointed by the governor, and the commissioners shall serve at his pleasure. In other parishes the jury commission shall consist of the clerk of court or a deputy clerk designated by him in writing to act in his stead in all matters affecting the jury commission, and four other persons appointed by written order of the district court, who shall serve at the court's pleasure.

Before entering upon their duties, members of the jury commission shall take an oath to discharge their duties faithfully.

Three members of the jury commission shall constitute a quorum.

Meetings of the jury commission shall be open to the public.

Art 408. – In parishes other than Orleans, the jury commission shall select impartially at least three hundred persons having the qualifications to serve as jurors, who shall constitute the general venire.

A list of the persons so selected shall be prepared and certified by the clerk of court as the general venire list and shall be kept as part of the records of the commission.

The name and address of each person on the list shall be written on a separate slip of paper which shall be placed in a box labeled "General Venire Box."

After the jury commission has *selected* the general venire, it shall lock and seal the general venire box and deliver it to the clerk of the court, as the custodian thereof.

The jury commission shall meet at least once every six months and when ordered by the court, and may meet at any time to select or supplement the general venire. The commission may select a new general venire at any meeting,

and shall do so when ordered by this court. Amended by Acts 1968, No. 140, § 1.[2]

Art. 410 – At each commission meeting to revise and supplement the general venire, the commission shall examine the general venire list prepared at the previous selection of the general venire, and shall delete therefrom the names of those persons who:

(1) Have served as civil or criminal jurors since the previous selection of the general venire; or

(2) Are known to have died or who have become disqualified to serve as jurors since their selection on the general venire.

The slips bearing the names of those persons deleted from the general venire list shall be removed from the general venire box.

The commission shall then supplement the list prepared at the previous commission meeting and the corresponding slips in the box by selecting a sufficient number of additional persons in compliance with Article 408 or 409, whichever is applicable.

---

[2] Art. 408 – In parishes other than Orleans, the jury commission shall select impartially at least three hundred persons having the qualifications to serve as jurors, who shall constitute the general venire.

A list of the persons so selected shall be prepared and certified by the clerk of the court as the general venire list, and shall be kept as part of the records of the commission.

The name and address of each person on the list shall be written on a separate slip of paper, with no designation as to race or color, which shall be placed in a box labeled "General Venire Box."

After the jury commission has selected the general venire, it shall lock and seal the general venire box and deliver it to the clerk of court, as the custodian thereof.

The jury commission shall meet at least once every six months and when ordered by the court, and may meet at any time to select or supplement the general venire. The commission may select a new general venire at any meeting, and shall do so when ordered by the court.

Art. 411 – Upon order of the court the jury commission in parishes other than Orleans shall select by drawing indiscriminately and by lot from the general venire box the names of at least twenty but not more than fifty persons, with the number to be specified by the court in its order, who shall constitute the grand jury venire. A grand jury venire shall not be drawn from a general venire containing fewer than three hundred names.

The name of each person so selected shall be written on a slip of paper, with no designation as to race or color, in the presence of the commission, which shall place the slips in an envelope, seal the envelope, and write thereon the words "Grand Jury Venire."

The sealed envelope shall be placed in a box labeled "Grand Jury Box," which shall be locked and sealed and placed in the custody of the clerk of court for use at the next term of court, subject to the orders of the district court, as hereinafter provided. Amended by Acts 1968, No. 141, § 1.[3]

---

[3]Art. 411 – Upon order of the court the jury commission in parishes other than Orleans shall select by drawing indiscriminately and by lot from the general venire box the names of at least twenty but not more than fifty persons, with the number to be specified by the court in its order, who shall constitute the grand jury venire. A grand jury ventre shall be not drawn from a general venire containing fewer than three hundred names.

The slips containing the names of the persons so drawn shall be placed in an envelope, which shall be sealed and the words "Grand Jury Venire" written thereon.

The sealed envelope shall be placed in a box labeled "Grand Jury Box," which shall be locked and sealed and placed in the custody of the clerk of court for use at the next term of court, subject to the orders of the district court, as hereinafter provided.

The clerk shall prepare subpoenas directed to the persons on the grand jury venire, ordering their appearance in court on the date set by the court for the selection of the grand jury, and shall deliver the subpoenas to the sheriff for service.

Art. 413 – The grand jury shall consist of twelve persons qualified to serve as jurors, selected or drawn from the grand jury venire.

In parishes other than Orleans, the court shall select one person from the grand jury venire to serve as foreman of the grand jury. The sheriff shall draw indiscriminately and by lot from the envelope containing the remaining names on the grand jury venire a sufficient number of names to complete the grand jury. The envelope containing the remaining names shall be replaced into the grand jury box for use in filling vacancies as provided in Article 415.

In the parish of Orleans, the court shall select twelve persons from the grand jury venire, who shall constitute the grand jury. The court shall thereupon select one of the jurors to serve as foreman.

Art. 414 – A grand jury shall be impaneled twice a year in each parish, except in the parish of Cameron, in which at least one grand jury shall be impaneled each year.

In parishes other than Orleans, the court shall fix the time at which a grand jury shall be impaneled, but no grand jury shall be impaneled for more than eight months, nor less than four months, except in the Parish of Cameron in which the grand jury may be impaneled for a year.

In Orleans Parish, a grand jury venire shall be drawn by the jury commission not earlier than the fifteenth nor later than the twentieth day of February and August of each year. On the next legal day following the drawing, the jury commission shall submit the grand jury venire to the presiding judge, who shall impanel the grand jury. A grand jury in Orleans Parish shall be impaneled on the first Wednesday of March and September of each year.

A grand jury shall remain in office until a succeeding grand jury is impaneled. A court may not discharge a grand jury or any of its members before the time for the impaneling of a new grand jury, except for legal cause.

Art. 415 – When a vacancy occurs on a grand jury, the court shall fill the vacancy as follows:

(1) In parishes other than Orleans, by ordering the sheriff to draw indiscriminately and by lot from the envelope containing the remaining names on the grand jury venire a sufficient number of names to complete the grand jury. If the names in the envelope be exhausted before the grand jury is completed, or if a vacancy occurs on the grand jury and no names remain in the envelope, the court shall order the jury commission to withdraw indiscriminately and by lot from the general venire box and additional number of names sufficient to complete the grand jury.

(2) In Orleans Parish, by ordering the jury commission to draw indiscriminately and by lot from the general venire box twelve or more names, as specified by the court, from which the court shall select the persons necessary to fill the vacancy.

(3) If the foreman of the grand jury is, for any reason, unable to act, the court shall designate some member of the grand jury to serve as acting foreman or to serve as a new foreman of that grand jury. An acting foreman has the powers and duties of the foreman.

Art. 416 – Upon order of court the jury commission in parishes other than Orleans shall draw a petit jury venire. The commission shall draw indiscriminately and by lot thirty name slips from the general venire box, unless directed by the court order to draw a larger number. The persons whose names are so drawn shall be subject to serve as petit jurors for the first week of the next criminal session of court.

The court may also order the commission to draw indiscriminately and by lot as many additional name slips, not less than thirty, as it may direct for each additional week that a petit jury venire may be required, not to exceed two additional weeks. The persons whose names are so drawn shall be subject to serve as petit jurors for the week for which their names were drawn.

A petit jury venire for the first week of a session shall not be drawn from a general venire containing less than two hundred fifty names, and no petit jury venire for any subsequent week shall be drawn from a general venire containing less than one hundred fifty names.

The commission shall place the slips bearing the names of the petit jury venire for each week in a separate envelope. It shall seal each envelope and write thereon the words "Petit Jury Venire No. 1," "Petit Jury Venire No. 2," and "Petit Jury Venire No. 3." Each envelope shall be placed in a box labeled "Petit Jury Box."

If a petit jury venire does not serve during the week for which it was drawn, the court may order that it serve during any other week of that session of court.

Art. 417. In parishes other than Orleans, the clerk of court shall make a proces verbal of the selection of the general venire and of the drawing of the grand jury venire and of the petit jury venire. It shall be certified to by a member of the commission and shall be filed in the clerk's office as a public record.

The clerk shall make a list of the names on the grand jury venire and on the petit jury venire, showing the week for which each petit jury venire is to serve. The lists, together with the general venire list, shall be a part of the proces verbal.

The clerk shall cause a copy of the petit jury venire list and grand jury venire list to be published in the official journal of the parish, if there be one, or in some other newspaper published in the parish, or, if there is no official journal or other newspaper in said parish, he shall post a copy of the lists on the door of the courthouse.

The clerk shall prepare subpoenas directed to the persons on the petit jury venire and deliver them to the sheriff for service.

Art. 419 – A general venire, grand jury venire, or petit jury venire shall not be set aside for any reaosn unless fraud has been practiced or some great wrong committed that would work irreparable injury to the defendant.

This article does not affect the right to challenge for cause a juror who is not qualified to serve.

2. PORTION OF DECISION OF SUPREME COURT OF LOUISIANA IN *STATE OF LOUISIANA V. PRATT*, 255 La. 919, 233 So. 2d 883 (1970), DEALING WITH JURY SELECTION.

HAMLIN, Justice.

By bill of indictment filed September 15, 1967, Lee Perry Pratt was jointly charged with Claude Alexander with the crime of aggravated rape upon a young woman on September 4, 1967—the record reveals that the victim was sixteen years of age at the time the alleged crime was committed. LSA-R.S. 14:42. A severance was granted on November 10, 1967, after the hearing of preliminary motions.[1] Defendant was tried by jury, found guilty without capital punishment, and sentenced to a term at hard labor in the Louisiana State Penitentiary for the remainder of his natural life. He appeals

[1] Minutes of the trial court, January 15, 1968, recite in part; "In accordance with the District Attorney's filing his new indictments and in view of the language of Code 705 stating that the proceedings under the original indictment are not affected except that it may be inconsistent with the indictment under the provisions of this code, in order to protect the rights of the accused, counsel for the accused moves that all of the proceedings under the original indictment, including but not limited to the motion for severance, application for Bill of Particulars, motion to quash and all proceedings in connection therewith, be made a part of the new indictment, and further, that the accused, James [Lee Perry] Pratt, reserves his rights as a pauper, as provided under the Code of Civil Procedure, to obtaining the transcript of the entire proceedings."

to this Court from his conviction and sentence, presenting for our consideration twelve bills of exceptions.[2]

* * * * *

Bill of Exceptions No. 2.

Bill of Exceptions No. 2 was reserved when the trial court overruled defendant's motion to quash the indictment filed against him for the following reasons:

1. The Jury Commission which selected the Grand Jury list and venire excluded women and members of the Negro race.

2. The Grand Jury list and Venire from which the Grand Jury was empaneled and the Grand Jury which found the indictment excluded women.

3. Citizens of the Negro race were included in the Grand Jury list and Grand Jury venire in such small numbers as to constitute only a token, having no relationship to the number of citizens of the Negro race as compared to the number of citizens of the Caucasian race in the general population in the Parish of Lafayette and in the Fifteenth Judicial District of the State of Louisiana.

4. The indictment filed against Lee Perry Pratt is invalid and illegal and should be quashed because it was returned by a Grand Jury empaneled from a Grand Jury venire made up contrary to the provisions of the Fifth, Sixth, Fourteenth, and Fifteenth Amendments to the Constitution of the United States.

Counsel for the defendant urges herein that Bill of Exceptions No. 2 contains three propositions, each of which is sufficient to quash the indictment: (1) There were no Negroes on the Jury Commission which selected the Grand Jury which indicted the defendant; (2) There were no

---

[2]The appeal of Claude Alexander was also argued in this Court on the day we heard the instant appeal. Bills of exceptions reserved to the denial of preliminary motions are similar in both appeals.

Negroes on the Grand Jury which indicted the defendant; and (3) There were no women on the Jury Commission, Grand Jury, or Petit Jury.

Oliver J. LeBlanc, Clerk of Court, Lafayette Parish, Lafayette, Louisiana, testified that Members of the Jury Commission herein were of the Caucasian race; that there had never been any Negroes on the Commission. This Commission of five members, including the Clerk of Court, is appointed by the district judge, who makes his own selection or secures recommendations from the Clerk of Court. Mr. LeBlanc stated that he had never made any recommendations to the judge, and that he did not know whether the names of any Negroes had been submitted to the judge for appointment.

Despite the fact that the Jury Commission included no Negroes in its composition, the evidence discloses no prejudicial exclusion. Under the circumstances, we find that the following from *State v. Barksdale*, 247 La. 198, 170 So. 2d 374 (Cert. denied), 382 U.S. 921, 86 S.Ct. 297, 15 L.Ed. 2d 236, is controlling:

> "Another complaint is that no Negro has ever served as Jury Commissioner or as Foreman of the Grand Jury in Orleans Parish. These are appointive offices filled by the governor and judges, respectively, based upon their evaluation of the qualification of the individual appointee. The absence of Negroes in those offices at this time is not evidence of systematic discrimination against Negroes in the selection of juries." See, *State v. Marks*, 252 La. 277, 211 So. 2d 261.

The testimony attached to the instant bill discloses that the jury venire herein was selected from a cross-section of the Parish of Lafayette, and that names placed in the venire were chosen from various lists, such as the Telephone Directory, the City Directory, and the voting list of the Registrar of Voters. No conscious effort was made to include or exclude members of any race. Questionnaires were sent to

prospective jurors under a system of selecting one out of eight names. Answers included a designation of race, but the testimony affirms that race was not considered when names gathered from the questionnaires were placed in the jury venire box. Pertinent testimony of Mr. LeBlanc is as follows:

"Q. Was any conscious effort made to include members of the Negro race?

"A. We do not make selection from race. We just go to the questionnaries or by recommendations, one way or the other.

"Q. Now you said that list was put in the venir box. What list?

"A. The slips or list that are put in the general venire box are made from questionnaires that I mailed out.

"Q. Questionnaires?

"A. Yes.

"Q. That are mailed out to whom?

"A. To different people in the Parish.

"Q. And these questionnaires ask them to recommend—

"A. No, no, to fill in questionnaires to get their qualifications and occupations to see if they are qualified to serve on the jury.

"Q. Now, who is this questionnarie sent to? How is that determined?

"A. To the different people in the Parish by the registrar of voter's list and the telephone book, city directory, different lists that are submitted by school board or any list that we can find that we think we got address for the mixed race one way or the other.

"Q. In this instance here of this grand jury venire, the last one that we're talking about, was the list of registered voters from Mr. Eraste Landry's office used?

"A. It was.

"Q. Did that include the list of colored voters as well as white voters?

"A. It did.

"Q. Were any selections made from the list of colored voters?

"A. No selections were made from colored voters or white voters. They were taken if we thought that they were qualified to serve on the jury."

The fact that the Grand Jury included no members of the Negro race is, in our opinion, a matter of coincidence and not purposeful exclusion. As stated supra, the composition of the general venire was indiscriminate; the names of the Grand Jury venire were drawn from the general venire. It follows that race was not a factor in selection. See, Article 411, Louisiana Code of Criminal Procedure.

Article 402 of the Code of Criminal Procedure provides, "A woman shall not be selected for jury service unless she has previously filed with the clerk of court of the parish in which she resides a written declaration of her desire to be subject to jury service." In *State v. Comeaux*, 252 La. 481, 211 So. 2d 620, we stated the reason for the exclusion of women from mandatory jury service as follows:

> "Nor can we conclude that the statute exempting women from jury service on the basis of their sex is not based upon a reasonable classification. Women by nature are the center of home and family life. Louisiana, acting in pursuit of the general welfare, may conclude that women may be relieved from the civic duty of jury service. *Hoyt v. State of Florida*, 368 U.S. 57, 82 S.Ct. 159, 7 L.Ed. 2d 118 (1961). See also *State v. Reese*, 250 La. 151, 194 So. 2d 729 (1967)."

In *Hoyt v. State of Florida, supra*, the United States Supreme Court considered a Florida statute similar to Article 402, *supra*. It held the statute constitutional and concluded:

"* * * Given the reasonableness of the classification involved in Sec. 40.01(1), the relative paucity of women jurors does not carry the constitutional consequence appellant would have it bear. 'Circumstances or chance may well dictate that no persons in a certain class will serve on a particular jury or during some particular period.' *Hernandez v. Texas, supra,* 347 U.S. 475, at 482, 74 S.Ct. 667, at 672, 98 L.Ed. 866."

We conclude that defendant herein suffered no deprivation of his constitutional rights by the omission of women from the Jury Commission, Grand Jury, and Petit Jury. No women volunteered for jury service; the following testimony of Mr. LeBlanc affirms this fact:

"Q. In drawing up the list of three hundred names, were any citizens of the female sex included?

"A. No.

"Q. In fact, all women were excluded, isn't that right?

"A. We didn't have any names submitted to us of any with the intention of willing to serve.

"* * *

"Q. Were any invitations or notices sent to women advising that they had a right to declare their desire to serve on the jury?

"A. I've discussed that with the Assistant District Attorney and I've sent her at different women's clubs to explain to the women the possibility of being on the jury. The reason so far that the women have not served is because facilities and accommodations for ladies were not available in the old courthouse. But since the new place is being constructed we're working on the women to submit names and intention to serve."

Defendant had the burden of proving unreasonable race and class discrimination under the assertions and contentions averred in this bill of exceptions. *Hernandez v. Texas,* 347 U.S. 475, 74 S.Ct. 667, 98 L.Ed. 866. This he failed to

do; likewise, he proved no violation of his constitutional rights.

Bill of Exceptions No. 2 is without merit.

* * * * *

LIBRARY
SUPREME COURT, U. S.

Supreme Court, U.S.
FILED
JUL 28 1971
E. ROBERT SEAVER, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

70-5026

No. ~~5944~~

CLAUDE ALEXANDER,

Petitioner,

versus

STATE OF LOUISIANA,

Respondent.

On Writ of Certiorari to the Supreme Court
of the State of Louisiana

BRIEF ON BEHALF OF RESPONDENT, STATE OF LOUISIANA

JACK P. F. GREMILLION,
Attorney General,
State of Louisiana,
Baton Rouge, Louisiana;

HARRY HOWARD,
Assistant Attorney General;

BERTRAND DE BLANC,
District Attorney,
Fifteenth Judicial District Court,
Lafayette, Louisiana;

CHARLES R. SONNIER,
Assistant District Attorney;
Attorneys for Respondent.

INDEX

Page

STATEMENT OF THE CASE 1

ARGUMENT 5

CONCLUSION 19

CERTIFICATE 20

APPENDIX 1a

AUTHORITIES

Cases:

Akins v. Texas, 325 U.S. 398, 65 S. Ct. 1276, 89 L. Ed. 1692 8

Avery v. Georgia, 345 U.S. 559 ..... 9, 11, 12

Brown v. Allen, 1953, 344 U.S. 443, 474, 73 S. Ct. 397, L.Ed. 494 9

Harris v. State of New York, 401 U.S. 28 L. Ed. 2d 1 (Feb. 24, 1971) 18, 19

Hernandez v. State of Texas, 345 U.S. 475, 74 S.Ct. 667 8

Hoyt v. State of Florida, 368 U.S. 57, 82 S. Ct. 59 (1961) 13, 14, 15, 16

Miranda v. Arizona, 304 R.S. 436, 86 S. Ct., 1602 ..... 16, 17, 18, 19

Rabinowitz v. United States, 366 F. 2d 34 (5 Cir. 1966) 9

Scott v. Walker, 358 F. 2d 561 (5 Cir. 1966) 9

Swain v. Alabama, 380 U.S. 202, 85 S. Ct. 824, 829, 13 L. Ed. 2d 759 (1964) 9

AUTHORITIES (Continued)

	Page
Turner v. Fouche, 396 U.S. 346 (1970)	10, 11
Walder v. United States, 347 U.S. 62, 74 S. Ct. 354 (1954)	18
Whitus v. Georgia, 385 U.S. 545	1, 11, 12
Statutes:	
Fifth, Sixth and Fourteenth Amendments to the United States Constitution	4
Louisiana Code of Criminal Procedure, Articles 401-404, 408, 410-411, 413-417 and 419	4
Louisiana Code of Criminal Procedure, Articles 402, 403	12, 13
Revised Statutes of Louisiana, Title 15, Section 493	4, 17

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1970

No. 5944

CLAUDE ALEXANDER,
Petitioner,

versus

STATE OF LOUISIANA,
Respondent.

On Writ of Certiorari to the Supreme Court of the State of Louisiana

BRIEF ON BEHALF OF RESPONDENT, STATE OF LOUISIANA

STATEMENT OF THE CASE

A petition for writ of certiorari and a motion for leave to proceed in forma pauperis were filed on September 29, 1970, in the United States Supreme Court and were granted by the Court on March 1, 1971. The opinion of the Louisiana Supreme Court is reported at 255 La. 941, 233 So. 2d 891.

Petitioner, Claude Alexander, is under a sentence of life imprisonment imposed by the Fifteenth Judicial District Court in and for the Parish of Lafayette,

Louisiana, following his conviction for rape. That conviction was affirmed on appeal by the Supreme Court of Louisiana.

A factual statement of the physical events surrounding the rape in question is incorporated in toto from the Louisiana Supreme Court opinion at 893. The events are as follows:

> "About midnight on September 3, 1967, a sixteen year old girl accompanied by her date, Carl Arleth, Jr., an eighteen year old young man, after visiting various places of amusement in Lafayette, Louisiana, went to Girard Park where they decided to stop for a few minutes. While walking in the vicinity of the park lake, they were accosted by two young Negroes, Claude Alexander and Lee Perry Pratt.
>
> "These two men informed the couple that they had a gun and grabbed Arleth, robbing him of $4.00. One of the men then assaulted the young girl who began screaming and fighting him off. At that time the other man struck Arleth, knocking him down, and as he lay on the ground, Alexander and his companion assaulted the girl, telling her that she had better do what they wanted or they would shoot both her and her boyfriend. The two men tried to tear off her clothes and succeeded in pulling off her girdle and underwear. Then Alexander had sexual intercourse with the girl while his companion helped to hold her down and quiet her. Following this, the companion had sexual in-

tercourse with the girl while Alexander held her down. This procedure was again alternated. At that point, the girl had only her bra and dress on, but Alexander pulled off the dress and grabbed her by the wrists, dragged her on her bare skin across the blacktopped street for a distance of 185 feet and dumped her into the coulee which was eleven feet deep. About this time she blacked out and Alexander then went down into the coulee at the entrance to a large concrete culvert across the road and, while Alexander was having sexual relations with her, the City Police came upon the scene. Two officers, Sidney Broussard and Patrolman John Broussard, were in the patrol car when Sidney Broussard noticed someone running in the coulee. He stopped the car, got out and spotted his light within the coulee where he saw Alexander lying in a prone position on top of the girl. Upon being d i s c o v e r e d, Alexander got up, zipped the fly of his trousers and entered the North end of the culvert right next to where he had been lying. The other officer then ran to the other end of the culvert. At this time Officer Sidney Broussard loudly called on Alexander to come out. Upon the latter's failure to do so, the officer fired a shot on the side of the culvert into the ground. Then Alexander came out on the North end of the culvert and was placed under arrest by the officers who had him lie on the ground face down. At this time the girl was screaming and began climbing the banks of the coulee, and Sidney Broussard went to her assistance. When he did so, Alex-

ander got up and fled. The officers followed him in close pursuit and finally apprehended him."

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

Petitioner cites in argument the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and also Articles 401-404, 408, 410-411, 413-417, and 419 of the Louisiana Code of Criminal Procedure. Respondent adds Revised Statutes of Louisiana, Title 15, Section 493.

QUESTIONS PRESENTED

Petitioner submits three substantial questions in this appeal:

(1) Was petitioner, who is a Negro, denied due process and equal protection of the laws as guaranteed by the Fourteenth Amendment by being indicted by a grand jury chosen from a venire from which Negro citizens were allegedly systematically excluded in violation of *Whitus v. Georgia*, 385 U.S. 545?

(2) Was petitioner denied due process of law as guaranteed by the Fourteenth Amendment by being indicted by a grand jury chosen from a venire from which women had been allegedly systematically excluded?

(3) Was petitioner denied due process of law as guaranteed by the Fourteenth Amendment where

at trial a statement was allegedly introduced, for impeachment purposes, that he allegedly had given to the police officers shortly after his arrest and where the testimony of the police officer allegedly established that petitioner was not advised that he had the right to have a lawyer present at the time he gave any statement and that petitioner had not affirmatively waived his right to remain silent?

This brief will clearly indicate that petitioner's arguments are entirely without merit and his petition for relief should be denied.

ARGUMENT

PETITIONER WAS INDICTED BY A GRAND JURY SELECTED FROM LISTS OF PERSONS REPRESENTING A FAIR CROSS SECTION OF THE ENTIRE POPULATION OF THE PARISH (COUNTY) OF LAFAYETTE AND ALL HIS RIGHTS UNDER THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT WERE PROTECTED

Petitioner alleges that he was denied equal protection of the law in that Negroes were systematically excluded from the grand jury that indicted him. In order to support this contention he claims he has made out a prima facie showing of racial discrimination in the selection of the grand jury that indicted him. It is our intention to show that the evidence fails to show this.

This case comes out of a jurisdiction where the jury commission as a matter of practice personally solicits

a large segment of the population of the Parish (County) of Lafayette, without regard to race, to become prospective jurors.

The Parish (County) of Lafayette has a population of 44,986 persons over the age of 21 years and hence eligible for service on juries (United States Census reports for 1960 which were admitted in evidence below); 35,513 were white and 9,436 or 21.06 percent were Negro. There were 40,896 registered voters of which 6,541 were Negro and 34,355 were white (A. 30). The jury commission through one of its members, the clerk of court, sent out approximately 11,000 questionnaires (A. 45) to prospective jurors touching upon the qualifications required to serve on juries (A. 8-9). The list of persons to whom these questionnaires were sent were taken indiscriminately and without regard to race from a list of registered voters (every eighth name), a telephone directory containing the names of every subscriber in the parish, the city directory of the City of Lafayette, lists submitted by the school board or any list the commission could find, including recommendations made by members of the jury commission (A. 34, 35 and 37). No questionnaires were sent to women or other groups exempted by law (A. 36). It is clear from the record that the sources from which the prospective jurors were taken represented a broad base representative of the entire Parish of Lafayette. About 50 percent of the questionnaires were returned mostly from persons of the white or Caucasian race (A. 46). In all the jury commission had a card index containing 7,374 names of which 1,015 were Negro (A. 15). This constitutes 13.76 percent.

From the objective information obtained from the prospective jurors (A. 8-9) regarding residence, age, criminal convictions, sex, ability to read and write the English language, mental competency, possible exemptions, possible physical impairment, etc., a determination was made as to whether the person could serve on the jury (A. 48). The questionnaires of those persons the commission thought could not serve were rejected and those they thought could serve were placed together (A. 48). A little four by five inch card was made on each of these apparently qualified prospective jurors and placed in alphabetic order in a card index (A. 36). Then the commission then made a slip of paper with the name, address, ward and precinct shown on each of the cards and these are attached to the card (A. 51, 57 and 58). Then 400 of the slips of paper are placed in the general venire box completely indiscriminately (A. 55 and 56). The 400 names included included the names of 27 Negroes or 6.75 percent and the race of 5 persons was unknown (A. 29-65). The clerk testified that no consideration was given to race during the selection procedure (A. 34, 35, 41, 45, 47-48, 54-57, 59). This evidence was never contradicted. The commission then draws indiscriminately and by lot from the general venire box the names of 20 persons to form the grand jury venire (A. 3, 25) as required by Louisiana Code of Criminal Procedure, Article 411 (B.A. 4a). The 20-man grand jury venire had one Negro on it. (A. 3, 16-24). The district judge chose the foreman on the grand jury from the 20-man grand jury venire and the remaining 11 members were drawn indiscriminately and by lot in open court (A. 3-4). The 12-man grand jury which indicted the petitioner were all white. (A. 3-4, 16-24, 39).

The burden is upon the accused to establish that there has been discrimination in the selection of juries on a racial basis. What constitutes discrimination is a question of fact and the mere fact that there was not proportional representation of all ethnic groups on the jury is not discrimination. *Hernandez vs. State of Texas*, 345 U.S. 475, 74 S. Ct. 667.

On this point the court in *Akins vs. Texas*, 325 U.S. 398, 65 S. Ct. 1276, 89 L. Ed. 1692 on page 1279 of the Supreme Court Reporter said:

> "Defendants under our criminal statutes are not entitled to demand representatives of their racial inheritance upon juries before whom they are tried. But such defendants are entitled to require that those who are trusted with jury selection shall not pursue a course of conduct which results in discrimination in the selection of jurors on racial grounds." (Citation omitted). "Our directions that indictments be quashed when Negroes, although numerous in the community, were excluded from Grand Jury lists have been based on the theory that their continual exclusion indicated discrimination and not on the theory that racial groups must be recognized." (Citation omitted). "The mere fact of inequality in the number selected does not in itself show discrimination. A purpose to discriminate must be present which may be proven by systematic exclusion of eligible jurymen of the proscribed race or by unequal application of the law to such an extent as to show intentional discrimination."

We feel that the following language used by Mr. Justice White as the organ of the court in *Swain vs. Alabama*, 380 U.S. 202, 208, 85 S. Ct. 824, 829, 13 L. Ed. 2d 759 (1964) is pertinent to this case. It reads as follows:

> "'Neither the jury roll nor the venire need be a perfect mirror of the community or accurately reflect the proportionate strength of every identifiable group.' We learn from this that jurors should be selected as men and not as members of a race. Obviously the number of races and nationalities and the variance in qualifications of our citizens would make it impossible to meet a requirement of proportional representation. See *Cassell v. Texas*, 339 U.S. 282, 70 S. Ct. 629, 94 L. Ed. 839 (1949)."

There has developed recently, principally in the federal court system, a body of decisions declaring that there is constitutional duty upon local officials to develop and utilize a system of jury selection that will result in a fair cross section of the community being placed on master lists to be used as a source from which to select grand and petit jurors, and that there be no discrimination against any class or group of persons. *Avery vs. Georgia*, 345 U.S. 559; *Brown vs. Allen*, 1953, 344 U.S. 443, 474, 73 S. Ct. 397, L. Ed. 494. See also *Scott vs Walker*, 358 F. 2d 561 (5 Cir. 1966); *Rabinowitz vs. United States*, 366 F. 2d 34 (5 Cir. 1966).

We contend that the testimony of the clerk of court, a member of the jury commission, affirmatively shows that the jury commission made its master list from

a broad base which represented a cross section of the parish chosen indiscriminately from such lists as the register of voters, telephone directory, city directory and other lists. He testified further that after receiving the questionnaires properly filled out, the commission eliminated those who did not possess the basic qualifications such as ability to read and write and those with physical impairments but that in discarding questionnaires no consideration was given to whether the person was white or Negro. There was no evidence to the contrary.

Petitioner states that this court has long held that where statistically significant disparities between the percentage of Negroes eligible to serve on juries and the percentage on jury rolls has been shown, a prima facie case of racial discrimination has been made. In support of this statement he cites various cases, the latest being *Turner v. Fouche*, 396 U.S. 346, (1970). A close analyzation of this case, however, reveals that the court required more than a mere showing of a disparity between the percentage of Negroes eligible to serve on juries and the percentage on jury rolls, in order to establish a prima facie case of discrimination. In *Turner* the court required that there be a disparity between the percentage of Negro residents in the county and the number on the grand jury, and that the "*disparity originate, at least in part, at the one point in the selection process where the jury commissioners invoked their subjective judgment rather than objective criteria*", in order to make out a prima facie case. The court in *Turner* found that 171 of 178 persons eliminated on the basis of the subjective test of not being "upright or intelligent" were Negroes.

The process which was utilized to choose the grand jury in the instant case afforded no such opportunity for the commissioners to inject their subjective judgment in eliminating prospective jurors. The majority of the potential jurors who were eliminated were exempted by law. Those who were not, were eliminated on the basis of information appearing on the questionnaires which were prepared by the prospective jurors themselves. Those who could not read or write or who suffered from some physical abnormality which would have prevented them from effectively serving as jurors were excluded.

As one can readily see, these were all objective criteria and no broad and vague subjective test such as being "upright and intelligent" was employed to exclude any of the prospective jurors. The petitioner has failed to argue or prove that the qualifications required of the prospective jurors were not objective criteria.

Since the petitioner has not demonstrated that the disparity in the percentages of Negroes on the grand jury and Negroes in the parish originated at a point where the jury commissioners invoked their subjective judgment rather than objective criteria, as was the case in *Turner*, he has not made out a prima facie case.

Petitioner also alleges that the evidence established that there was an "opportunity for discrimination" in violation of *Whitus v. Georgia*, 385 U. S. 545 (1967), and *Avery v. Georgia*, 345 U.S. 559 (1953). In the *Whitus* and *Avery* cases the "opportunity for discrimination" was blatant and conspicuous. The lists of prospective

jurors were obtained by the selection of names from tax return sheets which were white for white taxpayers and yellow for Negro taxpayers. In the *Whitus* case the jury list was also made up from an old jury list which had been condemned as illegal by the Court of Appeals. None of these aggravated circumstances were evident in the instant case and petitioner cannot validly analogize *Whitus* and *Avery* with the case at bar.

Even if the system employed by the Lafayette Parish jury commission created an opportunity for discrimination, this in itself would not be adequate grounds for overturning the conviction. According to the decision in the *Whitus* case, once the petitioner establishes that an opportunity for discrimination existed, he must make out a prima facie case that discrimination occurred in fact. It has been shown in the discussion, supra, that the petitioner has failed to satisfy this requirement.

Petitioner's contention is without merit.

LOUISIANA'S STATUTE GRANTING WOMEN AN ABSOLUTE EXEMPTION FROM JURY SERVICE UNLESS THEY EXPRESSLY WAIVE THAT PRIVILEGE BY INDICATING THEIR DESIRE TO BE PLACED ON THE JURY LIST DOES NOT VIOLATE THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES

The statute under attack here is Louisiana Code of Criminal Procedure Article 402 which reads as follows:

> "A woman shall not be selected for jury service unless she has previously filed with the clerk of court of the parish in which she resides a written declaration of her desire to be subject to jury service."

Louisiana Code of Criminal Procedure, Articles 402-403 (set out in the Appendix to this Brief — B.A. 1a) exempts from jury service the following persons or classes of persons: women, the governor, lieutenant governor, state comptroller, state treasurer, secretary of state, superintendent of public education, their clerks and employees, etc.

Women as shown above are granted an absolute exemption which they may expressly waive by filing with the clerk of court of the parish in which they reside a written declaration of their desire to be subject to jury service.

The other persons and classes recited in the statute are exempted but they must claim the exemption. (B.A. 1a)

In the first case, the exemption is in effect unless it is waived and in the second, it must be claimed to be effective.

This statute which grants women an absolute exemption is exactly the same as the one which Florida had in 1961 and which was found to be constitutional by the United States Supreme Court in the case of *Hoyt v. State of Florida*, 368 U.S. 57, 82 S. Ct. 159 (1961).

At the time the *Hoyt* case was decided, eighteen states and the District of Columbia accorded women an absolute exemption based solely on their sex, exercisable in one form or another. In three of these states, Florida, Louisiana and New Hampshire, the exemption was automatic unless a woman volunteered to jury service.

The Florida statute found constitutional by this Court in the *Hoyt* case does not purport to exclude women from state jury service but rather to give to women the privilege to serve but does not impose service as a duty. It accords women an absolute exemption from jury service unless they expressly waive that privilege.

This Court in the *Hoyt* case (82 S. Ct. 162) said:

> "We cannot say that it is constitutionally impermissible for a State, acting in pursuit of the general welfare, to conclude that a woman should be relieved from the civic duty of jury service unless she herself determines that such service is consistent with her own special responsibilities."

This Court further said in the *Hoyt* case that it could not regard it as irrational for a state legislature to consider preferable a broad exemption, whether born of a state's historic public policy or of a determination that it would not be administratively feasible to decide in each individual instance whether the family

responsibilties of a prospective female juror were serious enough to warrant an exemption.

This Court also found in the *Hoyt* case that Florida could reasonably conclude that full effectuation of this exemption made it desirable to relieve women of the necessity of affirmatively claiming it, while at the same time requiring of men an assertion of the exemption available to them; and that Florida could from the standpoint of its administration concern consider that it was impractical to compel large numbers of women, who have an absolute exemption, to come to the clerk's office for examination since they so generally assert their exemption.

Petitioner makes much to-do over the fact that Florida and other states have changed their methods of selection with regard to women over the past ten years since the *Hoyt* decision. The fact that other states have seen fit to change their rules certainly can in no way mean that Louisiana must change her ways in order to conform with what other states are doing. There was a valid state interest in the *Hoyt* case in 1961 for the state to act in the interest of the general welfare and this interest remains today.

There is no evidence in the record to show that Louisiana has arbitrarily undertaken to exclude women from jury service. On the contrary, the jury commission of Lafayette Parish has consistently sought to interest the entire population of the parish to serve on the jury. While no questionnaires were sent out to women and other exempted groups, still the commission

took active steps to interest women in submitting their names for jury service under the provisions of Louisiana law. (A. 54) Since the questionnaires were for the purpose of determining eligibility of persons to serve, it would have been a futile thing to get the qualifications of a prosepctive female juror without a previous commitment from her to serve.

This Court in the *Hoyt* case (82 S. Ct. 166) on this point concluded by saying:

> "(9) Finding no substantial evidence whatever in this record that Florida has arbitrarily undertaken to exclude women from jury service, a showing which it was incumbent on appellant to make, *Hernandez v. Texas* supra, 347 U.S. at 479-480, 74 S. Ct. at 671; *Fay v. New York*, supra, 332 U.S. at 285, 67 S. Ct. at 1626, we must sustain the judgment of the Supreme Court of Florida. Cf. *Akins v. Texas*, supra."

Petitioner's contention is without merit.

THE IMPEACHMENT OF ACCUSED'S TESTIMONY BY THE TESTIMONY OF OTHER WITNESSES OF A PRIOR CONTRADICTORY STATEMENT MADE BY THE ACCUSED DID NOT VIOLATE HIS RIGHTS TO DUE PROCESS OF LAW EVEN THOUGH ALL WARNINGS UNDER *MIRANDA V. ARIZONA*, 384 U.S. 436, 86 S. Ct. 1602 WOULD NOT HAVE BEEN GIVEN HIM.

The facts upon which this complaint is made are as follows:

After the State had rested its case, the defense placed the accused on the stand and he gave his version of the events surrounding the offense. After the accused was tendered to the State for cross-examination, the district attorney, out of the presence of the jury, proved to the satisfaction of the trial judge the admissibility of a certain oral inculpatory statement made by the accused, as having been given free and voluntary in accordance with Louisiana law and having complied with the procedural safeguards required by *Miranda v. Arizona,* 384 R.S. 436, 86 S. Ct. 1602 (A. 122-126). The jury was then returned to the court room and the State then proceeded to cross-examine the accused in the presence of the jury. When the accused denied having made the said inculpatory and contradictory statement, the district attorney announced that he would impeach the accused's testimony by the testimony of other witnesses. (A. 135). This he did do under the provisions of Louisiana Revised Statutes, Title 15, Section 493, which reads as follows:

> "Whenever the credibility of a witness is to be impeached by proof of any statement made by him contradictory to his testimony, he must first be asked whether he has made such statement, and his attention must be called to the time, place and circumstances, and to the person to whom the alleged statement was made, in order that the witness may have an oppor-

tunity of explaining that which is prima facie contradictory. If the witness does not distinctly admit making such statement, evidence that he did make it is admissible."

The Louisiana Supreme Court, in reviewing the conviction, found that the oral inculpatory statement made by the accused was free and voluntary and that he had been given all the warnings required by *Miranda,* Supra. (A. 170-180).

Assuming for the purpose of argument that all warnings under *Miranda v. Arizona,* Supra. had not been given, the statement would have been admissible under the recent decision of *Harris v. State of New York,* 401 U.S. ____, 28 L. Ed. 2d 1 (February 24, 1971). The *Harris* case held that statements inadmissible against an accused in the prosecution's case in chief because of lack of the procedural safeguards required by *Miranda v. Arizona,* supra, may, if its trustworthiness satisfies the legal standards, be used for impeachment purposes to attack the credibility of accused's trial testimony. This decision was based on *Walder v. United States,* 347 U.S. 62, 74 S. Ct. 354 (1954) where the Court permitted physical evidence, inadmissible in the case in chief, to be used for impeachment purposes. In this case Walder was impeached as to collateral matters included in his direct examination, whereas Harris was impeached as to testimony bearing more directly on the crime charged. The Court was not persuaded that there was a difference in principle which would warrant a different result. The instant case falls within the purview of the *Harris* case. The evidence

showed that the statement was voluntarily given and that the police in no way coerced him into making the statement. Thus, it is clear that the statement was trustworthy.

The Court in the *Harris* case was of the opinion that the impeachment process is a valuable aid to the jury in assessing a petitioner's credibility, and the benefits of this process should not be lost because of the speculative possibility that impermissible police conduct will be encouraged thereby. The Court further felt that, assuming that the exclusionary rule has a deterrent effect on proscribed police conduct, sufficient deterrence flows when the evidence in question is made unavailable to the prosecution in its case in chief .

While we feel that the evidence is clear that all warnings required under *Miranda v. Arizona*, supra, were given, yet, conceding by way of argument that they were not given, this case comes squarely within the propositions set forth in *Harris v. New York*, supra, in which the court stated that "the shield provided by Miranda cannot be perverted into a license to use perjury by way of a defense, free from the risk of confrontation with prior inconsistent utterances."

Petitioner's contention is without merit.

CONCLUSION

The arguments presented by the petitioner on each of the foregoing issues are without merit and his petition for relief should be denied.

Respectfully submitted,

JACK P. F. GREMILLION,
Attorney General
State of Louisiana,
Baton Rouge, Louisiana

HARRY HOWARD,
Assistant Attorney General;

BERTRAND DE BLANC,
District Attorney,
Fifteenth Judicial District Court,
Lafayette, Louisiana;

CHARLES R. SONNIER,
Assistant District Attorney;
Attorneys for Respondent.

CERTIFICATE

I, Bertrand De Blanc, attorney for the State of Louisiana, and a member of the bar of the United States Supreme Court, do hereby certify that a copy of the foregoing brief for respondent was served on the petitioner through his counsel of record, hereinbelow named, by placing the same in the United States mail, addressed to them at their offices with sufficient postage thereon annexed:

Jack Greenberg, James M. Nabrit, III, Charles Stephen Ralston, and Margrett Ford, 10 Columbus Circle, New York, New York, 10019, and Charles Finley, P. O. Box 3463, Lafayette, Louisiana, 70501.

_____

BERTRAND DE BLANC

APPENDIX

Statutes of Louisiana relating to jury selection.

Article 401. General qualifications of jurors

In order to qualify to serve as a juror, a person must:

(1) Be a citizen of the United States and of this state who has resided within the parish in which he is to serve as a juror for at least one year immediately preceding his jury service;

(2) Be at least twenty one years of age;

(3) Be able to read, write, and speak the English language;

(4) Not be under interdiction, or incapable of serving as a juror because of a mental or physical infirmity; and

(5) Not be under indictment for a felony, nor have been convicted of a felony for which he has not been pardoned.

Article 402. Service of women as jurors

A woman shall not be selected for jury service unless she has previously filed with the clerk of court of the parish in which she resides a written declaration of her desire to be subject to jury service.

Article 403. Exemption from jury service

The following persons are exempt from jury service, but the exemption is personal to them and is not a ground for challenge:

(1) The governor, lieutenant governor, state comptroller, state treasurer, secretary of state, superintendent of public education, their clerks and employees, the members, officers and clerks of the legislature, and the judges and active officers of the several courts of this state;

(2) Any other public official, if jury service would seriously interfere with the performance of his official duties;

(3) Attorneys-at-law, peace officers, ministers of the gospel, physicians and dentists actively engaged in the practice of their professions, school teachers, school bus drivers, pharmacists, members of paid fire departments, chief and their first assistants of bona fide volunteer fire departments, and persons who are required to travel regularly and routinely in the course and scope of their employment;

(4) Persons who because of age, sickness, or other physical infirmity would suffer serious detriment if required to serve as a juror; and

(5) Persons who have served as grand or petit jurors in criminal cases or as trial jurors in civil cases during a period of twelve months immediately preced-

ing their selection for jury service.

Article 404. Appointment of jury commission; term of office; oath; quorum

The jury commission of each parish shall consist of five members, each having the qualifications set forth in Article 401.

In Orleans Parish the jury commission shall be appointed by the governor, and the commissioners shall serve at his pleasure. In other parishes the jury commission shall consist of the clerk of court or a deputy clerk designated by him in writing to act in his stead in all matters affecting the jury commission, and four other persons appointed by written order of the district coure, who shall serve at the court's pleasure.

Before entering upon their duties, members of the jury commission shall take an oath to discharge their duties faithfully.

Three members of the jury commission shall constitute a quorum.

Meetings of the jury commission shall be open to the public.

Article 408. Selection of general venire in parishes other than Orleans

In parishes other than Orleans, the jury commission shall select impartially at least three hundred persons having the qualifications to serve as jurors, who shall

constitute the general venire.

A list of the persons so selected shall be prepared and certified by the clerk of court as the general venire list, and shall be kept as part of the records of the commission.

The name and address of each person on the list shall be written on a separate slip of paper which shall be placed in a box labeled "General Venire Box."

After the jury commission has selected the general venire, it shall lock and seal the general venire box and deliver it to the clerk of court, as the custodian thereof.

The jury commission shall meet at least once every six months and when ordered by the court, and may meet at any time to select or supplement the general venire. The commission may select a new general venire at any meeting, and shall do so when ordered by the court.

Article 410. Revising and supplementing the general venire

At each commission meeting to revise and supplement the general venire, the commission shall examine the general venire list prepared at the previous selection of the general venire, and shall delete therefrom the names of those persons who:

(1) Have served as civil or criminal jurors since the previous selection of the general venire; or

(2) Are known to have died or who have become

disqualified to serve as jurors since their selection on the general venire.

The slips bearing the names of those persons deleted from the general venire list shall be removed from the general venire box.

The commission shall then supplement the list prepared at the previous commission meeting and the corresponding slips in the box by selecting a sufficient number of additional persons in compliance with Article 408 or 409, whichever is applicable.

Article 411. Drawing of grand jury venire in parishes other than Orleans; disposition of slips; jury box

Upon order of the court the jury commission in parishes other than Orleans shall select by drawing indiscriminately and by lot from the general venire box the names of at least twenty but not more than fifty persons, with the number to be specified by the court in its order, who shall constitute the grand jury venire. A grand jury venire shall not be drawn from a general venire containing fewer than three hundred names.

The name of each person so selected shall be written on a slip of paper, with no designation as to race or color, in the presence of the commission, which shall place the slips in an envelope, seal the envelope, and write thereon the words "Grand Jury Venire."

The sealed envelope shall be placed in a box labeled "Grand Jury Box," which shall be locked and sealed and placed in the custody of the clerk of court for use at the next term of court, subject to the orders of the district court, as hereinafter provided.

Article 413. Method of impaneling of grand jury; selection of foreman

The grand jury shall consist of twelve persons qualified to serve as jurors, selected or drawn from the grand jury venire.

In parishes other than Orleans, the court shall select one person from the grand jury venire to serve as foreman of the grand jury. The sheriff shall draw indiscriminately and by lot from the envelope containing the remaining names on the grand jury venire a sufficient number of names to complete the grand jury. The envelope containing the remaining names shall be replaced into the grand jury box for use in filling vacancies as provided in Article 415.

In the Parish of Orleans, the court shall select twelve persons from the grand jury venire, who shall constitute the grand jury. The court shall thereupon select one of the jurors to serve as foreman.

Syllabus

ALEXANDER *v.* LOUISIANA

CERTIORARI TO THE SUPREME COURT OF LOUISIANA

No. 70–5026. Argued December 6–7, 1971—
Decided April 3, 1972

Petitioner, a Negro, attacks his rape conviction in Lafayette Parish, which was affirmed by the Louisiana Supreme Court, contending that the grand jury selection procedures followed in his case were invidiously discriminatory against Negroes and, because of a statutory exemption provision, against women. The jury commissioners (all white) sent out questionnaires (including a space for racial designation) to those on a list compiled from nonracial sources. Of the 7,000-odd returns, 1,015 (14%) were from Negroes, though Negroes constituted 21% of the parish population presumptively eligible for grand jury service. By means of two culling-out procedures, when racial identifications that the commissioners had attached to the forms were plainly visible, the pool was reduced to 400, of whom 27 (7%) were Negro, from which group the 20-man grand jury venires were drawn. Petitioner's venire included one Negro (5%), and the grand jury that indicted him had none. There was no evidence of conscious racial selection and one commissioner testified that race was no consideration. *Held:*

1. Petitioner made out a prima facie case of invidious racial discrimination in the selection of the grand jury that indicted him—not only on a statistical basis but by a showing that the selection procedures were not racially neutral—and the State, which did not adequately explain the disproportionately low number of Negroes throughout the selection process, did not meet the burden of rebutting the presumption of unconstitutionality in the procedures used. Cf. *Avery* v. *Georgia*, 345 U. S. 559; *Whitus* v. *Georgia*, 385 U. S. 545. Pp. 628–632.

2. Petitioner's contentions regarding discrimination against women in the selection of grand jurors are not reached. Pp. 633–634.

255 La. 941, 233 So. 2d 891, reversed.

WHITE, J., delivered the opinion of the Court, in which BURGER, C. J., and BRENNAN, STEWART, MARSHALL, and BLACKMUN, JJ., joined, and in Part I of which DOUGLAS, J., joined. DOUGLAS, J., filed a concurring opinion, *post*, p. 634. POWELL and REHNQUIST, JJ., took no part in the consideration or decision of the case.

Charles Stephen Ralston argued the cause for petitioner. With him on the brief were *Jack Greenberg, James M. Nabrit III, Margrett Ford,* and *Charles Finley.*

Bertrand DeBlanc argued the cause for respondent. With him on the brief were *Jack P. F. Gremillion,* Attorney General of Louisiana, *Harry Howard,* Assistant Attorney General, and *Charles R. Sonnier.*

Birch Bayh filed a brief for the National Federation of Business and Professional Women's Clubs, Inc., as *amicus curiae* urging reversal.

MR. JUSTICE WHITE delivered the opinion of the Court.

After a jury trial in the District Court for the Fifteenth Judicial District of Lafayette Parish, Louisiana, petitioner, a Negro, was convicted of rape and sentenced to life imprisonment. His conviction was affirmed on appeal by the Louisiana Supreme Court,[1] and this Court granted certiorari.[2] Prior to trial, petitioner had moved to quash the indictment because (1) Negro citizens were included on the grand jury list and venire in only token numbers, and (2) female citizens were systematically excluded from the grand jury list, venire, and impaneled grand jury.[3] Petitioner therefore argued that the indictment against him was invalid because it was returned by a grand jury impaneled from a venire made up con-

[1] 255 La. 941, 233 So. 2d 891 (1970). Petitioner was indicted for aggravated rape, and a 12-member jury unanimously returned a verdict of "Guilty without Capital Punishment."

[2] 401 U. S. 936 (1971).

[3] Petitioner does not here challenge the composition of the petit jury that convicted him. The principles that apply to the systematic exclusion of potential jurors on the grounds of race are essentially the same for grand juries and for petit juries, however. *Pierre* v. *Louisiana,* 306 U. S. 354, 358 (1939). See generally *Neal* v. *Delaware,* 103 U. S. 370 (1881).

trary to the requirements of the Equal Protection Clause and the Due Process Clause of the Fourteenth Amendment. Petitioner's motions were denied.

According to 1960 U. S. census figures admitted into evidence below, Lafayette Parish contained 44,986 persons over 21 years of age and therefore presumptively eligible for grand jury service;[4] of this total, 9,473 persons (21.06%) were Negro.[5] At the hearing on petitioner's motions to quash the indictment, the evidence revealed that the Lafayette Parish jury commission consisted of five members, all of whom were white, who had been appointed by the court. The commission compiled a list of names from various sources (telephone directory, city directory, voter registration rolls, lists prepared by the school board, and by the jury commissioners themselves) and sent questionnaires to the persons on this list to determine those qualified for grand jury service. The questionnaire also included a space to indicate the race of the recipient. Through this process, 7,374 questionnaires were returned, 1,015 of which (13.76%) were from Negroes,[6] and the jury commissioners attached to each

[4] The general qualifications for jurors set by Louisiana law are that a person must be a citizen of the United States and of Louisiana who has resided in the parish for at least a year prior to jury service, be at least 21 years old, be able to read, write, and speak the English language, "[n]ot be under interdiction, or incapable of serving as a juror because of a mental or physical infirmity," and "[n]ot be under indictment for a felony, nor have been convicted of a felony for which he has not been pardoned." La. Code Crim. Proc., Art. 401 (1967).

[5] Testimony at the hearing on the motion to quash the indictment also revealed that there were 40,896 registered voters in the parish. Of this total, 17,803 were white males, and 16,483 were white females; 3,573 were Negro males, and 3,037 were Negro females. App. 38.

[6] One hundred and eighty-nine questionnaires had no racial designation. App. 15.

questionnaire an information card designating, among other things, the race of the person, and a white slip indicating simply the name and address of the person. The commissioners then culled out about 5,000 questionnaires, ostensibly on the ground that these persons were not qualified for grand jury service or were exempted under state law. The remaining 2,000 sets of papers were placed on a table, and the papers of 400 persons were selected, purportedly at random, and placed in a box from which the grand jury panels of 20 for Lafayette Parish were drawn. Twenty-seven of the persons thus selected were Negro (6.75%).[1] On petitioner's grand jury venire, one of the 20 persons drawn was Negro (5%), but none of the 12 persons on the grand jury that indicted him, drawn from this 20, was Negro.

I

For over 90 years, it has been established that a criminal conviction of a Negro cannot stand under the Equal Protection Clause of the Fourteenth Amendment if it is based on an indictment of a grand jury from which Negroes were excluded by reason of their race. *Strauder* v. *West Virginia*, 100 U. S. 303 (1880); *Neal* v. *Delaware*, 103 U. S. 370 (1881). Although a defendant has no right to demand that members of his race be included on the grand jury that indicts him, *Virginia* v. *Rives*, 100 U. S. 313 (1880), he is entitled to require that the State not deliberately and systematically deny to members of his race the right to participate as jurors in the admin-

[1] There are some inconsistencies in the record as to the total number of Negroes in this group. The State introduced a certification by the clerk of the court stating that there were 25 Negroes and four persons with no race shown. App. 15. A count of the actual list of jurors, however, shows 27 Negroes and five persons with no race. App. 16–24.

istration of justice.[8] *Ex parte Virginia*, 100 U. S. 339 (1880); *Gibson* v. *Mississippi*, 162 U. S. 565 (1896). Cf. *Hernandez* v. *Texas*, 347 U. S. 475 (1954). It is only the application of these settled principles that is at issue here.

This is not a case where it is claimed that there have been no Negroes called for service within the last 30 years, *Patton* v. *Mississippi*, 332 U. S. 463, 464 (1947); only one Negro chosen within the last 40 years, *Pierre* v. *Louisiana*, 306 U. S. 354, 359 (1939); or no Negroes selected "within the memory of witnesses who had lived [in the area] all their lives," *Norris* v. *Alabama*, 294 U. S. 587, 591 (1935). Rather, petitioner argues that, in his case, there has been a consistent process of progressive and disproportionate reduction of the number of Negroes eligible to serve on the grand jury at each stage of the selection process until ultimately an all-white grand jury was selected to indict him.

In Lafayette Parish, 21% of the population was Negro and 21 or over, therefore presumptively eligible for grand jury service. Use of questionnaires by the jury commissioners created a pool of possible grand jurors which was 14% Negro, a reduction by one-third of possible black grand jurors. The commissioners then twice culled this group to create a list of 400 prospective jurors, 7% of whom were Negro—a further reduction by one-half.

---

[8] Section 4 of the 1875 Civil Rights Act, 18 Stat. 336, now codified as 18 U. S. C. § 243, affirms and reinforces this constitutional right: "No citizen possessing all other qualifications which are or may be prescribed by law shall be disqualified for service as grand or petit juror in any court of the United States, or of any State on account of race, color, or previous condition of servitude; and whoever, being an officer or other person charged with any duty in the selection or summoning of jurors, excludes or fails to summon any citizen for such cause, shall be fined not more than $5,000."

The percentage dropped to 5% on petitioner's grand jury venire and to zero on the grand jury that actually indicted him. Against this background, petitioner argues that the substantial disparity between the proportion of blacks chosen for jury duty and the proportion of blacks in the eligible population raises a strong inference that racial discrimination and not chance has produced this result because elementary principles of probability make it extremely unlikely that a random selection process would, at each stage, have so consistently reduced the number of Negroes.[9]

This Court has never announced mathematical standards for the demonstration of "systematic" exclusion of blacks but has, rather, emphasized that a factual inquiry is necessary in each case that takes into account all possible explanatory factors. The progressive decimation of potential Negro grand jurors is indeed striking here, but we do not rest our conclusion that petitioner has demonstrated a prima facie case of invidious racial discrimination on statistical improbability alone, for the selection procedures themselves were not racially neutral. The racial designation on both the questionnaire and the information card provided a clear and easy opportunity for racial discrimination. At two crucial steps in the selection process, when the number of returned questionnaires was reduced to 2,000 and when the final selection of the 400 names was made, these racial identifications were visible on the forms used by the jury commissioners, although there is no evidence that the commissioners consciously selected by race. The situa-

[9] We take note, as we did in *Whitus* v. *Georgia*, 385 U. S. 545, 552 n. 2 (1967), of petitioner's demonstration that under one statistical technique of calculating probability, the chances that 27 Negroes would have been selected at random for the 400-member final jury list, when 1,015 out of the 7,374 questionnaires returned were from Negroes, are one in 20,000. Brief for Petitioner 18 n. 18.

tion here is thus similar to *Avery* v. *Georgia*, 345 U. S. 559 (1953), where the Court sustained a challenge to an array of petit jurors in which the names of prospective jurors had been selected from segregated tax lists. Juror cards were prepared from these lists, yellow cards being used for Negro citizens and white cards for whites. Cards were drawn by a judge, and there was no evidence of specific discrimination. The Court held that such evidence was unnecessary, however, given the fact that no Negroes had appeared on the final jury: "Obviously that practice makes it easier for those to discriminate who are of a mind to discriminate." 345 U. S., at 562. Again in *Whitus* v. *Georgia*, 385 U. S. 545 (1967), the Court reversed the conviction of a defendant who had been tried before an all-white petit jury. Jurors had been selected from a one-volume tax digest divided into separate sections of Negroes and whites; black taxpayers also had a "(c)" after their names as required by Georgia law at the time. The jury commissioners testified that they were not aware of the "(c)" appearing after the names of the Negro taxpayers; that they had never included or excluded anyone because of race; that they had placed on the jury list only those persons whom they knew personally; and that the jury list they compiled had had no designation of race on it. The county from which jury selection was made was 42% Negro, and 27% of the county's taxpayers were Negro. Of the 33 persons drawn for the grand jury panel, three (9%) were Negro, while on the 19-member grand jury only one was Negro; on the 90-man venire from which the petit jury was selected, there were seven Negroes (8%), but no Negroes appeared on the actual jury which tried petitioner. The Court held that this combination of factors constituted a prima facie case of discrimination, and a similar conclusion is mandated in the present case.

Once a prima facie case of invidious discrimination is

established, the burden of proof shifts to the State to rebut the presumption of unconstitutional action by showing that permissible racially neutral selection criteria and procedures have produced the monochromatic result. *Turner* v. *Fouche*, 396 U. S. 346, 361 (1970); *Eubanks* v. *Louisiana*, 356 U. S. 584, 587 (1958). The State has not carried this burden in this case; it has not adequately explained the elimination of Negroes during the process of selecting the grand jury that indicted petitioner. As in *Whitus* v. *Georgia*, *supra*, the clerk of the court, who was also a member of the jury commission, testified that no consideration was given to race during the selection procedure. App. 34. The Court has squarely held, however, that affirmations of good faith in making individual selections are insufficient to dispel a prima facie case of systematic exclusion. *Turner* v. *Fouche*, *supra*, at 361; *Jones* v. *Georgia*, 389 U. S. 24, 25 (1967); *Sims* v. *Georgia*, 389 U. S. 404, 407 (1967). "The result bespeaks discrimination, whether or not it was a conscious decision on the part of any individual jury commissioner." *Hernandez* v. *Texas*, 347 U. S., at 482. See also *Norris* v. *Alabama*, 294 U. S., at 598. The clerk's testimony that the mailing list for questionnaires was compiled from nonracial sources is not, in itself, adequate to meet the State's burden of proof, for the opportunity to discriminate was presented at later stages in the process. The commissioners, in any event, had a duty "not to pursue a course of conduct in the administration of their office which would operate to discriminate in the selection of jurors on racial grounds." *Hill* v. *Texas*, 316 U. S. 400, 404 (1942). See also *Smith* v. *Texas*, 311 U. S. 128, 130 (1940). Cf. *Carter* v. *Jury Commission*, 396 U. S. 320, 330 (1970). We conclude, therefore, that "the opportunity for discrimination was present and [that it cannot be said] on this record that it was not resorted to by the commissioners." *Whitus* v. *Georgia*, *supra*, at 552.

II

Petitioner also challenges the Louisiana statutory exemption of women who do not volunteer for grand jury service. Article 402, La. Code Crim. Proc. This claim is novel in this Court and, when urged by a male, finds no support in our past cases. The strong constitutional and statutory policy against racial discrimination has permitted Negro defendants in criminal cases to challenge the systematic exclusion of Negroes from the grand juries that indicted them. Also, those groups arbitrarily excluded from grand or petit jury service are themselves afforded an appropriate remedy. Cf. *Carter* v. *Jury Commission, supra.* But there is nothing in past adjudications suggesting that petitioner himself has been denied equal protection by the alleged exclusion of women from grand jury service. Although the Due Process Clause guarantees petitioner a fair trial, it does not require the States to observe the Fifth Amendment's provision for presentment or indictment by a grand jury. In *Duncan* v. *Louisiana,* 391 U. S. 145 (1968), the Court held that because trial by jury in criminal cases under the Sixth Amendment is "fundamental to the American scheme of justice," *id.,* at 149, such a right was guaranteed to defendants in state courts by the Fourteenth Amendment, but the Court has never held that federal concepts of a "grand jury," binding on the federal courts under the Fifth Amendment, are obligatory for the States. *Hurtado* v. *California,* 110 U. S. 516, 538 (1884).

Against this background and because petitioner's conviction has been set aside on other grounds, we follow our usual custom of avoiding decision of constitutional issues unnecessary to the decision of the case before us. *Burton* v. *United States,* 196 U. S. 283, 295 (1905). See *Ashwander* v. *Tennessee Valley Authority,* 297 U. S. 288, 346–348 (1936) (Brandeis, J., concurring). The

State may or may not recharge petitioner, a properly constituted grand jury may or may not return another indictment, and petitioner may or may not be convicted again. See *Ballard* v. *United States*, 329 U. S. 187, 196 (1946).

Reversed.

MR. JUSTICE POWELL and MR. JUSTICE REHNQUIST took no part in the consideration or decision of this case.

MR. JUSTICE DOUGLAS, concurring.

While I join Part I of the Court's opinion, I am convinced we should also reach the constitutionality of Louisiana's exclusion of women from jury service. The issue is squarely presented, it has been thoroughly briefed and argued, and it is of recurring importance. The Court purports to follow "our usual custom" of avoiding unnecessary constitutional issues. But that cannot be the sole rationale, for both questions are of constitutional dimension. We could just as well say that deciding the constitutionality of excluding women from juries renders it unnecessary to reach the question of racial exclusion.

It can be argued that the racial exclusion admits of the "easier" analysis. But this Court does not sit to decide only "easy" questions. And even when faced with "hard" constitutional questions, we have often decided cases on alternate grounds where a decision on only one would have been dispositive. See, *e. g.*, *Dunn* v. *Blumstein*, *ante*, p. 330.

Petitioner complains of the exclusion of blacks and women from the grand jury which indicted him. Conceivably, he could have also complained of the exclusion of several other minority groups. Would he then be relegated to suffer repetitive re-indictment and re-conviction while this court considered the exclusion of each group in a separate lawsuit?

I believe the time has come to reject the dictum in *Strauder* v. *West Virginia*, 100 U. S. 303, 310, that a State "may confine" jury service "to males." I would here reach the question we reserved in *Hoyt* v. *Florida*, 368 U. S. 57, 60, and hold that Art. 402, La. Code Crim. Proc.,[1] as applied to exclude women as a class from Lafayette Parish jury rolls, violated petitioner Alexander's constitutional right to an impartial jury drawn from a group representative of a cross-section of the community.[2]

It is irrelevant to our analysis that Alexander attacks the composition of the grand jury that indicted him, not the petit jury which convicted him, for it is clear that a State which has a grand jury procedure must administer that system consonant with the Federal Constitution. The Court asserts, however, that "federal concepts" of a grand jury do not obligate the States, and cites *Hurtado* v. *California*, 110 U. S. 516, 538. *Ante*, at 633. But *Hurtado* supports no such proposition. That case merely held that the Fifth Amendment grand jury requirement was not binding on the States. It said nothing as to the constitutional requirements which obtain once a State chooses to provide a grand jury, and we are directed to no other case which does speak to the subject. But this Court has said time and again, regardless of a State's freedom to reject the federal grand jury, and to reject even the petit jury for offenses punishable by less than six months' imprisonment, *Baldwin* v. *New York*, 399 U. S. 66, "Once the State chooses to provide grand

[1] Article 402, La. Code Crim. Proc.: "A woman shall not be selected for jury service unless she has previously filed with the clerk of court of the parish in which she resides a written declaration of her desire to be subject to jury service."

[2] The fact that Alexander is a male challenging the exclusion of females from the jury rolls is not of significance, for his claim rests, not on equal protection principles, but on the right of any defendant to an impartial jury, no matter what his sex or race.

and petit juries, whether or not constitutionally required to do so, it must hew to federal constitutional criteria . . . ." *Carter* v. *Jury Commission*, 396 U. S. 320, 330.[3]

It is furthermore clear that just such a "federal constitutional criteri[on]" is that the grand jury, just as the petit jury, must be drawn from a representative cross-section of the community. The Court was speaking of both grand and petit juries in *Carter* v. *Jury Commission, supra*, when, quoting *Smith* v. *Texas*, 311 U. S. 128, 130, it *defined* the jury as "a body truly representative of the community." 396 U. S., at 330. The Court was speaking of grand and petit juries when it said in *Brown* v. *Allen*, 344 U. S. 443, 474: "Our duty to protect the federal constitutional rights of all does not mean we must or should impose on states our conception of the proper source of jury lists, *so long as the source reasonably reflects a cross-section of the population* suitable in character and intelligence for that civic duty." (Emphasis supplied.) As Mr. Justice Black said, speaking for the Court in *Pierre* v. *Louisiana*, 306 U. S. 354, 358: "Indictment by Grand Jury and trial by jury cease to harmonize with our traditional concepts of justice at the very moment particular groups, classes or races . . . are excluded as such from jury service." (Footnote omitted.)

The requirement that a jury reflect a cross-section of the community occurs throughout our jurisprudence: "The American tradition of trial by jury, considered in connection with either criminal or civil proceedings, neces-

---

[3] While *Carter* arose under the Equal Protection Clause, and concerned the right of prospective jurors excluded from the venire solely by reason of their race, the analysis is the same in the instant case, where the question is the accused's right to an impartial jury. *Turner* v. *Louisiana*, 379 U. S. 466.

sarily contemplates an impartial jury drawn from a cross-section of the community. *Smith* v. *Texas*, 311 U. S. 128, 130; *Glasser* v. *United States*, 315 U. S. 60, 85." *Thiel* v. *Southern Pacific Co.*, 328 U. S. 217, 220. Accord, *Williams* v. *Florida*, 399 U. S. 78, 100; *Witherspoon* v. *Illinois*, 391 U. S. 510, 520; *Ballard* v. *United States*, 329 U. S. 187, 192–193; *Labat* v. *Bennett*, 365 F. 2d 698, 722–724.[4]

This is precisely the constitutional infirmity of the Louisiana statute. For a jury list from which women have been systematically excluded is not representative of the community.

> "It is said, however, that an all male panel drawn from the various groups within a community will be as truly representative as if women were included. The thought is that the factors which tend to influence the action of women are the same as those which influence the action of men—personality, background, economic status—and not sex. Yet it is not enough to say that women when sitting as jurors neither act nor tend to act as a class. Men likewise do not act as a class. But, if the shoe were on the other foot, who would claim

[4] The cases most precisely articulating the requirement that a jury reflect a cross-section of the community arose under our supervisory power over the federal courts. See, *e. g.*, *Ballard* v. *United States*, 329 U. S. 187; *Thiel* v. *Southern Pacific Co.*, 328 U. S. 217; *Glasser* v. *United States*, 315 U. S. 60. The detail with which these cases were written, however, simply reflects our obligation to provide guidelines for the federal system. It is consistent with our principle of federalism that the States be permitted greater latitude in fashioning their jury-selection procedures, but to avoid consitutional infirmity the result must be designed to produce a representative cross-section of the community. *Brown* v. *Allen*, 344 U. S. 443, 474; *Carter* v. *Jury Commission*, 396 U. S. 320, 322, 338.

that a jury was truly representative of the community if all men were intentionally and systematically excluded from the panel? The truth is that the two sexes are not fungible; a community made up exclusively of one is different from a community composed of both; the subtle interplay of influence one on the other is among the imponderables. To insulate the courtroom from either may not in a given case make an iota of difference. Yet a flavor, a distinct quality is lost if either sex is excluded. *The exclusion of one may indeed make the jury less representative of the community than would be true if an economic or racial group were excluded.*" *Ballard* v. *United States, supra,* at 193–194. (Emphasis supplied; footnotes omitted.)

The record before us, moreover, indisputably reveals that such a systematic exclusion operated with respect to the Lafayette Parish jury lists. There were no women on the grand jury that indicted petitioner, and there were no women on the venire from which the jury was chosen. While the venire was selected from returns to questionnaires sent to parish residents, not a single one of the some 11,000 questionnaires was even sent to a woman. This was done deliberately.[5]

---

[5] Mr. LeBlanc, clerk of the court in Lafayette Parish, and a member of the parish jury commission, testified as to the process by which the venire was chosen at the hearing on the motion to quash Alexander's indictment:

"A. The slips or list that are put in the general venire box are made from questionnaires that I mailed out.

"Q. Now, who is this questionnaire sent to? How is that determined?

"A. To the different people in the Parish by the registrar of voter's list and the telephone book, city directory, different lists that are

The State relies on the fact that the automatic exemption it grants to women is the same as the one upheld in *Hoyt* v. *Florida*, 368 U. S. 57. In *Hoyt*, however, there were women on the jury rolls, and the jury commissioners had made good-faith efforts to include women on the jury lists despite the fact that they had an automatic exemption unless they volunteered for service. *Id.*, at 69 (Warren, C. J., concurring). Here, on the other hand, only the feeblest efforts were made to interest women in service,[6] and there was testimony that only a single woman had filled out a jury service questionnaire.[7] This, out of a parish population of 45,000 adults, 52% of whom were female.

The absolute exemption provided by Louisiana, and no other State,[8] betrays a view of a woman's role which

---

submitted by school board or any list that we can find that we think we got address [*sic*] for the mixed race one way or the other.

"Q. Was the questionnaire mailed to any women at all?

"A. We have received some that was filled in by some ladies. I think one.

"Q. Did you mail any to any women intentionally or did you intentionally exclude women when you mailed them?

"A. We didn't mail any to the women." App. 35, 53.

[6] The only evidence in the record that any effort whatsoever was expended to encourage women to volunteer for jury service was a statement by Mr. LeBlanc that he had "discussed that with the Assistant District Attorney," and that he had "sent her at [*sic*] different women's clubs to explain to the women the possibility of being on the jury." App. 54. He also averred that "we're working on the women to submit names and intention to serve." *Ibid.*

As indicated in n. 5, *supra*, however, these efforts produced but a single questionnaire from a woman. The 11,000 questionnaires sent to men, on the other hand, resulted in over 7,000 responses. App. 15.

[7] Testimony of Mr. LeBlanc. See nn. 5–6, *supra*.

[8] No State now prohibits women from service on juries altogether, Alabama's prohibition having been found unconstitutional in *White*

cannot withstand scrutiny under modern standards. We once upheld the constitutionality of a state law denying to women the right to practice law, solely on grounds of sex. *Bradwell* v. *State*, 16 Wall. 130. The rationale underlying Art. 402 of the Louisiana Code is the same as that which was articulated by Justice Bradley in *Bradwell*:

> "Man is, or should be, woman's protector and defender. The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life. The constitution of the family organization, which is founded in the divine ordinance, as well as in the nature of things, indicates the domestic sphere as that which properly belongs to the domain and functions of womanhood. The harmony, not to say identity, of interests and views which belong, or should belong, to the family institution is repugnant to the idea of a woman adopting a distinct and independent career from that of her husband. . . .
>
> ". . . The paramount destiny and mission of woman are to fulfil the noble and benign offices of wife and mother. This is the law of the Creator. And the rules of civil society must be adapted to the general constitution of things, and cannot be based upon exceptional cases." *Id.*, at 141–142.

---

v. *Crook*, 251 F. Supp. 401 (MD Ala., 1966). Most States afford equal treatment to men and women, although exemptions are frequently provided for women who are pregnant or who have children under 18 at home. Five States now allow women an absolute exemption, based solely on their sex, but they must affirmatively request it. Ga. Code Ann. § 59–124 (1965); Mo. Const., Art. I, § 22 (b); N. Y. Judiciary Law § 507 (7) (1968); R. I. Gen. Laws Ann. § 9–9–11 (1970); Tenn. Code Ann. § 22–101, § 22–108 (1955).

Classifications based on sex are no longer insulated from judicial scrutiny by a legislative judgment that "woman's place is in the home," or that woman is by her "nature" ill-suited for a particular task. See, *e. g.*, *Reed* v. *Reed*, 404 U. S. 71. But such a judgment is precisely that which underpins the absolute exemption from jury service at issue.[9] Insofar as *Hoyt*, *supra*,

---

[9] Perhaps the purest articulation of the objection to woman jury service is that of Judge Turner, dissenting in *Rosencrantz* v. *Territory*, 2 Wash. Ter. 267, 5 P. 305 (1884), a case in which a female defendant challenged the grand jury which indicted her on the ground that it *included* married women living with their husbands. The challenge was rejected over Judge Turner's dissent:

"It is said that the rights of the weaker sex, if I may now call them so, are more regarded than in the days of Blackstone; and that the theory of that day, that women were unfitted by physical constitution and mental characteristics to assume and perform the civil and political duties and obligations of citizenship, has been exploded by the advanced ideas of the nineteenth century. This may be true. No man honors the sex more than I. None has witnessed more cheerfully the improvement in the laws of the States, and particularly in the laws of this Territory, whereby many of the disabilities of that day are removed from them, and their just personal and property rights put upon an equal footing with those of men. I cannot say, however, that I wish to see them perform the duties of jurors. The liability to perform jury duty is an obligation, not a right. In the case of woman, it is not necessary that she should accept the obligation to secure or maintain her rights. If it were, I should stifle all expression of the repugnance that I feel at seeing her introduced into associations and exposed to influences which, however others regard it, must, in my opinion, shock and blunt those fine sensibilities, the possession of which is her chiefest [sic] charm, and the protection of which, under the religion and laws of all countries, civilized or semi-civilized, is her most sacred right.

"If one woman is competent as a juror, all women having the same qualifications are competent. If women may try one case, they may try all cases. It is unnecessary to say more, to suggest the shocking possibilities to which our wives, mothers, sisters, and

embodies this discredited stereotype, it should be firmly disapproved.[10] See Johnston & Knapp, Sex Discrimination by Law: A Study in Judicial Perspective, 46 N. Y. U. L. Rev. 675, 708–721 (1971).

---

daughters may be exposed . . . . . These observations, however, are not pertinent here. The question is, What is the law?

"I say, that the laws now concerning the important incidents of a jury trial are, by express constitutional provision, what they were at the common law, and that under that law a jury was no jury unless it was composed of men." *Id.*, at 278–279, 5 P., at 309–310.

[10] In *Fay* v. *New York*, 332 U. S. 261, there is also a dictum approving the constitutionality of excluding women from jury service. Relying solely on the proposition that: "Until recently, and for nearly a half-century after the Fourteenth Amendment was adopted, it was universal practice in the United States to allow only men to sit on juries," the Court opined that "woman jury service has not so become a part of the textual or customary law of the land that one convicted of crime must be set free by this Court if his state has lagged behind what we personally may regard as the most desirable practice in recognizing the rights and obligations of womanhood." *Id.*, at 289–290. This dictum was totally irrelevant to the holding in *Fay*, approving New York's special "blue-ribbon" jury system, for the Court stated flatly that: "The evidence does not show that women are excluded from the special jury." *Id.*, at 278. Indeed, there were women on the very jury which was at issue in the case. *Ibid.*

The "nose-counting" approach which led to the *Fay* Court's refusal to recognize woman jury service as "part of the textual or customary law of the land" has, of course, been thoroughly undermined by subsequent events. See n. 8, *supra*. It has been suggested that the decision itself was overruled by *Duncan* v. *Louisiana*, 391 U. S. 145. *Id.*, at 185 n. 25, and text following (Harlan, J., dissenting). And what little there may be left after *Duncan*, is, like *Strauder* v. *West Virginia*, 100 U. S. 303, and *Hoyt* v. *Florida*, 368 U. S. 57, based on an obsolete view of woman's role which does not square with reality. "[The *Fay*] dictum . . . calls to mind—in its total reliance on historical practice as justification for sex discrimination—the . . . observation . . . that attitudes can be more formidable than arguments." Johnston & Knapp, Sex

Louisiana says, however, that women are not totally excluded from service; they may volunteer. The State asserts it is impractical to require women affirmatively to claim the statutory exemption because of the large numbers who would do so. This argument misses the point. Neither man nor woman can be expected to volunteer for jury service. *Hoyt, supra,* at 64–65. See L. Kanowitz, Women and the Law 30 (1969). Thus, the automatic exemption, coupled with the failure even to apprise parish women of their right to volunteer, results in as total an exclusion as would obtain if women were not permitted to serve at all.

Some violations of due process of law may be excused in the context of a criminal trial, if the error cannot be shown to have had an effect on the outcome. See, *e. g.*, *Giglio* v. *United States, ante,* p. 150; *Napue* v. *Illinois,* 360 U. S. 264, 272. But the right to a representative jury is one which would be trivialized were a similar requirement imposed:

> "We can never measure accurately the prejudice that results from the exclusion of certain types of qualified people from a jury panel. Such prejudice is so subtle, so intangible, that it escapes the ordinary methods of proof. It may be absent in one case and present in another; it may gradually and silently erode the jury system before it becomes evident. But it is no less real or meaningful for our purposes. If the constitutional right to a jury impartially drawn from a cross-section of the community has been violated, we should vindicate

---

Discrimination by Law: A Study in Judicial Perspective, 46 N. Y. U. L. Rev. 675, 715 (1971). See *State* v. *Emery,* 224 N. C. 581, 601, 31 S. E. 2d 858, 871 (1944) (Seawell, J., dissenting). See also *Rosencrantz* v. *Territory, supra* (Turner, J., dissenting).

that right even though the effect of the violation has not yet put in a tangible appearance. Otherwise that right may be irretrievably lost in a welter of evidentiary rules." *Fay* v. *New York*, 332 U. S. 261, 300 (Murphy, J., dissenting).

A statutory procedure which has the effect of excluding all women does not produce a representative jury, and is therefore repugnant to our constitutional scheme. Cf. *White* v. *Crook*, 251 F. Supp. 401, 408–409 (MD Ala. 1966). For these reasons, I would hold Art. 402, La. Code Crim. Proc., to be unconstitutional.